(19,096.)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1904.

## No. 130.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY, PETITIONERS,

*vs.*

WYCKOFF, SEAMANS & BENEDICT.

ON WRIT AND CROSS-WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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# Circuit Court of the United States 1

## FOR THE DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT<br><br>vs.<br><br>THE HOWE SCALE COMPANY OF 1886. | In Equity. |

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF VERMONT, IN THE SECOND CIRCUIT, SITTING IN EQUITY.

Humbly complaining unto this Honorable Court, your orator, Wyckoff, Seamans & Benedict, which is a corporation duly created by and existing under the laws of the State of New York, domiciled and having its principal office and place of business at Ilion, in said State, and a citizen of said State, 3 brings this, its bill of complaint, against The Howe Scale Company of 1886, a corporation duly created by and under the laws of the State of Vermont, and a citizen of said State and an inhabitant of the district aforesaid, the said corporation being duly organized pursuant to an act of the Legislature of the said State of Vermont, entitled "An Act to incorporate The Howe Scale Company of 1886," duly passed and approved November 24, 1886.

4 And thereupon your orator complains and says, that it has been informed and believes and therefore avers:

I.—That your orator now is, and ever since the 19th day of May, 1892, has been a corporation created by and existing under the laws of the State of New York, engaged in the manufacture and sale of typewriting machines, having its manufactory and principal place of business at Ilion, N. Y., and having its sales offices at No. 327 Broadway, Borough of Manhattan, City of New York, and elsewhere in the United States and in many foreign countries.

5 II.—That your orator is the sole and lawful successor in the typewriter business of E. Remington & Sons, of Ilion, N. Y., a corporation heretofore organized and existing under the laws of the State of New York, which for many years was engaged in the manufacture and sale of typewriting machines, as hereinafter stated.

III.—That in and about the year 1874 the said E. Remington & Sons began the manufacture and sale of typewriting machines, which business said corporation carried on continuously until the year 1886, when it was succeeded in said business by a corporation duly created by and organized under the laws
6 of the State of New York, under the name and style of "Standard Typewriter Manufacturing Co.," whose name was afterwards duly and lawfully changed to "Remington Standard Typewriter Manufacturing Company."

IV.—That said "Standard Typewriter Manufacturing Co." (afterwards Remington Standard Typewriter Manufacturing Company), by purchase, for a good and valuable consideration, lawfully acquired and succeeded to said typewriter business, and continued to conduct and carry on the said

business theretofore founded, conducted and carried 7
on by said E. Remington & Sons, and became and was the lawful owner of all the tools, machinery, patterns, patent rights and personal property used in said business, and continued to occupy the factory and premises theretofore occupied by its predecessors, E. Remington & Sons, and also acquired and became lawfully possessed of the good-will of said business, and the trade-names and trade-marks theretofore adopted and used therein, and thereafter continued to carry on said business, and did own and use said property rights, good-will, trade-names and trade-marks, until the year 1892, when said corporation was lawfully succeeded in said typewriter business, and in the good-will and trade- 8
marks and trade names thereof, by your orator, who acquired and became, was and is vested with all and singular the rights and interests of said business, and is now the sole and lawful successor and assignee and owner thereof, and as such has the exclusive right to the use of the words "Remington" and "Remington Standard" as trade-marks, trade names and designations for its typewriting machines, as hereinafter stated.

V.—That at the time said typewriter business was acquired of said E. Remington & Sons by your orator's predecessor, "Standard Typewriter Manufacturing Co.," (afterwards "Remington 9
Standard Typewriter Manufacturing Company"), said business was already an extensive one, and that since said business was acquired by said company and by your orator it has steadily increased and is now the largest business of its kind in the world.

VI.—Your orator further alleges upon information and belief and charges the fact to be, that when said typewriter business was first established by said corporation the typewriting machines manufactured and sold by said corporation were designated and known as the "Sholes & Glidden" typewriter,

10 those being the surnames of the inventors of the salient features then embodied in said machines; but that afterwards, to wit, in or about the year 1880, E. Remington & Sons, for the purpose of more clearly distinguishing its typewriting machines and of indicating the origin and ownership thereof, and to symbolize the good-will of said business, selected, adopted and used the names "Remington" and "Remington-Standard" as trade-marks and trade designations for its typewriting machines, and that such machines were continuously thereafter so stamped, marked and designated, and were widely advertised for sale, offered for sale, and sold by said corporation and by its duly authorized
11 agents as the "Remington" typewriter and the "Remington-Standard" typewriter, and the same became known to the public and to the purchasers or intending purchasers and to users of such machines in all parts of the world where typewriting machines have been sold and used as the "Remington" typewriter and the "Remington Standard" typewriter.

And your orator further shows to the Court that the above named successors and assignees of E. Remington & Sons and your orator, upon acquiring said business, the good-will thereof and the said trade-marks and trade-names, continued in like manner to stamp, mark, designate, advertise for sale,
12 offer for sale and to sell typewriting machines, and the same were and have been so designated, and were and are so known and distinguished in the markets and by the public, and particularly by all purchasers or intending purchasers and by users of typewriting machines, and have been and are advertised for sale, offered for sale, asked for and bought and sold as "Remington" typewriter and the "Remington-Standard" typewriter. In consequence whereof typewriting machines marked, designated or called the "Remington" typewriter or the "Remington-Standard" typewriter are understood to mean and have come to be known, and are

known in all parts of the world where typewriters 13
have been and are sold, purchased or used, as typewriting machines of your orator's manufacture, and said names and designations, "Remington" typewriter and "Remington-Standard," typewriter have in the markets of the world come to denote your orator's machines, as defendant well knew at the time of the commission of the grievances hereinafter mentioned.

VII.—And your orator further avers that the typewriting machines so manufactured and sold by E. Remington & Sons and by its successors and by your orator have for many years enjoyed and now enjoy a high reputation in the markets 14
of the world, and among purchasers and intending purchasers and among users of typewriting machines, and for many years have been sold and now are sold in large quantities. That said E. Remington & Sons and its successors, and particularly your orator, have always exercised the greatest care and skill in designing and improving their and its machines, and in the manufacture thereof, and have employed, and do employ, skilled mechanics and workmen, and have always used the best material and the most improved machinery and appliances in the manufacture of their and its typewriting machines. That in consequence of the diligent efforts of your orator' s predecessors and of your orator in 15
the premises, and of their and its large outlay of money, and the superior quality and excellence of their and its said machines, they have become and are widely known, sold, purchased and used, and have justly gained and enjoyed in the markets of the world, and among purchasers or intending purchasers, and among users of typewriting machines, wherever such machines have been known or used, a high reputation which was a source of great profit to your orator's predecessors, and has been and now is a source of great profit to your orator.

16 VIII.—That since the incorporation of your orator and the transfer to it of said property, business, good-will, patent rights, trade-marks, and trade names, as aforesaid, it has continued the same course theretofore pursued by its said predecessors, in respect to the manufacture of said typewriting machine hereinbefore set forth, except that it has from time to time improved the structure and quality thereof by embodying therein new and advantageous improvements and devices, and has employed new methods and appliances and has expended large sums of money in and about the manufacture and sale of its said machines, and the same have come to be and are known and distinguished in the trade
17 generally and particularly by all purchasers or intending purchasers, and users of typewriting machines by said trade-marks and trade designations "Remington" and "Remington-Standard."

IX.—Your orator further avers that for the purpose of informing the public of your orator's predecessors' rights on or about October 23, 1888, said trade-marks, consisting of the words "Remington" and "Remington-Standard," were by your orator's said predecessors, "Standard Typewriter Manufacturing Co.," duly registered in the United States Patent Office, according to the Acts of Congress in such case made and provided, as by reference to
18 said original certificates of registration, respectively numbered 15,960 and 15,961, or to a duly authenticated copy thereof ready here in court to be produced, will more fully appear.

That said registered trade-marks were in or about the year 1892 duly assigned and transferred to your orator, who is now the lawful owner thereof.

X.—And your orator further says that it has been informed and believes and therefore avers, that in or about the month of April, 1897, Charles N. Fay, Franklin H. Head, Franklin Remington and others, without your orator's knowledge, privity or con-

sent, organized and caused a corporation to be formed under the laws of the State of Illinois for the purpose of manufacturing and selling typewriting machines; and with the intent unlawfully and wrongfully to appropriate to themselves through the medium of said corporation, the benefits, advantages and reputation acquired by, and accruing to your orator by reason of the premises aforesaid, and the names of its predecessors, and the trade-marks and trade-names "Remington" and "Remington-Standard" and of the well-known designation of its machines as "Remington" typewriters and "Remington-Standard" typewriters, said Charles N. Fay, Franklin H. Head and Franklin Remington and their associate corporators caused such corporation to be incorporated under the name and style of "Remington-Sholes Company."

XI.—That upon being informed of the selection and adoption of said corporate name, and of the acts of said Charles N. Fay, Franklin H. Head and Franklin Remington and their said associates, your orator caused its strenuous objection to the use of said corporate name to be made known to said "Remington-Sholes Company," and to its officers and agents, and forbade its and their use of the name "Remington" in or as a part of said corporate name, or upon or in connection with the manufacture or sale of typewriting machines.

XII.—And your orator further says that it has recently been informed and believes, and therefore avers, that said "Remington-Sholes Company" and its officers and agents, with intent to deceive and to mislead the public, and purchasers and intending purchasers and users of typewriters, and to cause them to purchase and accept as and for machines of your orator's manufacture the machines manufactured by said "Remington-Sholes Company," selected and adoped the name "Remington," and marked, stamped and placed the same on its ma-

22 chines, and with like intent said "Remington-Sholes Company" and this defendant have extensively advertised their machines in numerous publications and in catalogues, circulars and other media, and have therein designated the same as "Remington typewriters," "Remington-Sholes," typewriters and "Rem-Sho" typewriters.

XIII.--And your orator is informed and believes and therefore avers, that said defendant, The Howe Scale Company of 1886, is fully cognizant of all the rights of your orator as hereinbefore set forth, and of the fraudulent purpose and intention of said incorporators, and of said "Remington-Sholes
23 Company," in the selection and adoption of said corporate name, and of said corporation in the use thereof as herein charged, and of the intent and purpose of said corporation in the selection, adoption and use of said names "Remington," "Remington-Sholes" and "Rem-Sho" upon and in connection with the sale of its typewriting machines, and in advertising for sale, offering for sale, and selling the same in the manner as hereinbefore set forth. And your orator has been informed and believes and therefore avers, that said defendant being animated by the same motives as the said "Remington-Sholes Company" in the sale of its machines, stamped, marked, designated, ad-
24 vertised and offered for sale and sold as aforesaid, and wholly without your orator's consent, with like intent as charged against said corporation, did, after the 1st day of May, A. D. 1897, and before the filing of this bill of complaint herein, and on divers days between those dates, uniawfully, wrongfully and fraudulently advertise for sale, offer for sale and sell a large number of such typewriting machines in the State of Vermont and in the Cities of Chicago, Ill.; Boston, Mass; Portland, Oregon; Kansas City, Mo.; New York, N. Y.; Baltimore, Md.; Pittsburg, Pa.; Cincinnati, O.; San Francisco, Cal.; Philadelphia, Pa.; Minneapolis, Minn.; Cleveland, O.; St.

Louis, Mo.; Los Angeles, Cal., and elsewhere in the United States, and continues to advertise for sale, and to offer for sale, and to sell, such machines under the name of and by the designation "Remington" and "Remington-Sholes" and "Rem-Sho" typewriter. 25

And your orator fears and has reason to fear and to believe, that unless the said defendant is restrained by a writ of injunction issuing out of this Court, it will continue to advertise for sale, offer for sale and to sell large numbers of said typewriting machines and thereby will cause great and irreparable loss, damage and injury to your orator's aforesaid exclusive right to the use of the said names "Remington" and "Remington-Standard." 26

XIV.—Your orator further says that it is informed and believes, and therefor avers, that such imitation and use by defendant of your orator's trade-mark and trade-name "Remington," &c., are calculated to mislead and deceive, and, in fact, have misled and deceived the public and purchasers, and intending purchasers and users of typewriting machines, and by reason of the acts and devices of said defendant, and of said "Remington-Sholes Company," many machines of said corporation so marked, stamped, designated and advertised, have been sold, purchased and accepted as and for the machines of your orator's manufacture to its great and continuing injury, and to the diminution of its business and the profits thereof. 27

XV.—And your orator further avers and charges that the designation by said "Remington Sholes Company" so devised, arranged and applied as aforesaid, and used by the defendant as aforesaid, which chiefly serves to give to its machines a name and reputation in the market, and with the public and purchasers and intending purchasers and users of typewriting machines, is the name "Remington," and its said "Remington-Sholes" typewriters, and

28 "Rem-Sho" typewriters, go into the market and are given reputation, and asked for, referred to, offered for sale, and sold as "Remington" typewriters or a species thereof, whereby the same are caused to be purchased and accepted as, and are believed and understood to be, typewriting machines made at your orator's manufactory, or for your orator, or under its authority and direction, and in connection with which its long experience, knowledge and skill have been exercised. And your orator further alleges upon information and belief, and therefore avers, that said designation "Remington" and "Remington-Sholes," and "Rem-Sho" used by said "Remington-Sholes Company," and by the de-
29 fendant and its agents put into the mouths of the trade, and of purchasers or intending purchasers, and of users of typewriting machines, have been used in many instances in the effectuation of said fraudulent purpose by said defendant, whereby your orator's sales of its machines have been reduced, its profits displaced and diminished, and an unfair and injurious competition created which threatens further to displace and diminish your orator's profits, and to embarrass it in the transaction of its business, and to prevent the full and unrestricted enjoyment of its reputation and its trade-marks and trade names "Remington" and "Remington-Standard."

30 XVI.—And your orator further avers upon information and belief and charges the fact to be that by using the said corporate name "Remington-Sholes Company" and the names "Remington" and "Remington-Sholes" and "Rem-Sho," this defendant has been enabled, and must continue to be enabled, unlawfully, wrongfully and fraudulently to place the machines of said "Remington-Sholes Company" upon the market, and to accomplish the sale thereof as and for your orator's machines or a species thereof, or as machines made under its authority and direction, and as and for typewriting machines in

connection with which your orator's skill, experience and knowledge have been exercised. 31

XVII.—And your orator further avers upon information and belief and charges the fact to be, that said fraudulent purpose of the defendant to market and sell the typewriting machines of said "Remington-Sholes Company" upon the established reputation of your orator's predecessors, and of your orator, and as and for a manufacture in connection with which your orator's skill, experience and knowledge have been exercised, has been promoted and effectuated by the adoption and use of said corporate name, and especially by the use of the name "Remington" long associated in the mind of the public, and 32 purchasers and intending purchasers and of users of writing machines with your orator's manufacture, and by the use of said name upon typewriting machines, and in publications and circulars and in advertising media and otherwise, the whole scheme of the organization of said corporation under the name "Remington-Sholes Company," and the things which said company and its incorporators and this defendant have done, being a fraudulent attempt, craftily devised and very cunningly set in motion to divert to the defendant the good-will and reputation for many years by your orator's predecessors and your orator enjoyed, and made of value in connection with their and its typewriting machines, which 33 scheme your orator avers is in all its parts unlawful, fraudulent and inequitable because it promotes and enables an unfair and fraudulent competition as hereinbefore set forth; and your orator prays that such scheme may in all its parts be corrected and checked, as equity may require according to the facts and circumstances of the case as they shall hereafter be made to appear.

XVIII.—And your orator further says, that it is informed and believes, and therefore avers, that the said trade-marks and trade names "Remington"

and "Remington-Standard" by your orator owned, and infringed by said defendant, as aforesaid, are of great value, and of value far in excess of the sum of $100,000, and that the good-will of your orator's business thus by said defendant sought to be diverted is of great value and of value far in excess of the sum of $100,000, and that your orator cannot with certainty state the exact amount of profits diverted by the said defendant, nor can it correctly or with certainty estimate the loss and injury sustained by it by reason of the fraudulent acts complained of, but is informed and believes the same to be in excess of the sum of $5,000, and so charges the fact to be, and prays that the said defendant may full and true disclosures make as to the same, and may be decreed to account therefor in full, and otherwise to respond in damages as may appear to be equitable.

To the end, therefore, that your orator may obtain relief in the premises in this Honorable Court where it alone can obtain relief, it humbly prays:

That the said The Howe Scale Company of 1886 may be made defendant in this bill, and compelled to answer each and every allegation therein contained, but not under oath, an answer under oath being waived, and prays also as follows:

First.—That said defendant may be required to render before a Master of this Honorable Court an account of the number of machines of the "Remington-Sholes Company" sold by it as aforesaid, and a full, true, perfect and complete account of all gains and profits diverted from your orator, or made by the wrongful and unlawful use of the trade-mark and trade names "Remington," or by the sale of typewriting machines upon or in connection with which the said trade-mark and trade names "Remington," shall have been unlawfully used, and may be decreed to pay over to your orator all such gains and profits from the aforesaid unlawful acts of said defendant, and all such gains and profits as your

orator would have received, but for the unlawful acts of said defendant, and deliver up to your orator all such typewriting machines of said "Remington-Sholes Company" bearing the trade mark "Remington," or the names "Remington-Sholes," or "Rem-Sho," now in defendant's possession or use. 37

SECOND.—That an injunction issue *pendente lite* out of this Honorable Court, restraining and prohibiting the defendant, its representatives, servants and agents from selling, advertising or offering for sale the typewriting machines manufactured by said "Remington-Sholes Company," bearing the name "Remington," or "Remington-Sholes," or "Rem-Sho" or "Remington-Sholes Company," or either of them, and from advertising, offering for sale or selling any such machines under the names and designation "Remington," "Remington-Sholes," "Rem-Sho" or "Remington-Sholes Company," or under any designation of which the word "Remington" shall be a part, and otherwise in every way restraining the fraudulent acts of the defendant, all and singular, hereinbefore recited and set forth, and that a perpetual injunction be issued enjoining the said The Howe Scale Company of 1886, its agents, and those in privity with it in every way, as hereinbefore prayed. 38

THIRD.—That said defendant be decreed to pay the costs of this suit. 39

And, finally, to the end that equity may be done, and that the relief herein prayed for, and all other relief that may be righteous in the premises to administer, may be afforded your orator, may it please your Honors such relief to grant, and to award against the said The Howe Scale Company of 1886 a writ of subpœna *ad respondendum* issuing out of and under the seal of this Court, commanding it on a day certain, and under a certain penalty, to be and

to appear in this Honorable Court, then and there to answer all and singular the premises, and to stand to, perform and abide such further order, direction or decree as may be made against it, said defendant. And your orator, as in duty bound, will ever pray, &c.

WYCKOFF, SEAMANS & BENEDICT,
By H. H. BENEDICT,
[CORPORATE SEAL.] President.

W. L. BURNAP,
Complainant's Solicitor,
Burlington, Vt.

H. D. DONNELLY,
Of Counsel,
280 Broadway,
New York City.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
County of New York,

I, HENRY H. BENEDICT, being duly sworn, depose and say: I am the president of Wyckoff, Seamans & Benedict, complainant corporation above named; that I have read the foregoing bill of complaint and know the contents thereof; that the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe it to be true.

H. H. BENEDICT.

Sworn to before me this 24th day of September, 1898.

GEORGE K. GILLULY,
[NOTARY'S SEAL.] Notary Public,
Kings Co.
Certificate filed in New York Co.

CIRCUIT COURT OF THE UNITED STATES 43

FOR THE DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT<br>vs.<br>THE HOWE SCALE COMPANY OF 1886. | In Equity. |

Amendment of bill of complaint in this cause, made pursuant to consent and stipulation hereto 44 annexed.

And now comes your orator, Wyckoff, Seamans & Benedict, and prays leave of this Honorable Court to amend its bill of complaint herein by inserting therein after the word "stated" at the end of the subdivision "IV," the following words: And your orator further alleges upon information and belief, and charges the fact to be, that ever since the incorporation of your orator, as aforesaid, your orator has frequently been known in the trade and designated by the public as "Remington Co.," "Remington Company," "The Remington Company," "Remington Typewriter Co.," "Remington Typewriter Company," and "The Remington 45 Typewriter Company," and other similar designations and was so known and designated prior to the time of the incorporation of the said "Remington-Sholes Company" as hereinafter alleged.

(Signed) H. D. DONNELLY,
Complainant's Counsel.

We hereby consent to the filing of the above amendment to the bill of complaint herein.

Dated Oct. 24, 1899.

(Signed) PEIRCE & FISHER,
Defendant's Solicitors.

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## UNITED STATES CIRCUIT COURT

FOR THE DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT<br>vs.<br>THE HOWE SCALE COMPANY OF 1886. | In Equity. |

47

THE ANSWER OF THE HOWE SCALE COMPANY OF 1886, RESPONDENT, TO THE BILL OF COMPLAINT.

This respondent, saving and reserving unto itself the benefit of all exceptions to the errors and imperfections in said bill contained, for answer thereto or to so much thereof as it is advised that it is necessary or material for it to make answer unto, answering, says:

I.—Respondent admits that it is a corporation, duly organized pursuant to an Act of the Legislature of the State of Vermont, and having its princi-
48 pal place of business in the City of Rutland, in said State; but whether or not complainant is a corporation organized and existing under the laws of the State of New York this respondent is ignorant, save as informed by the allegations of said bill of complaint, and therefore neither admits or denies the same, but leaves complainant to make proof thereof.

II.—Respondent, upon information and belief, admits that in or about the year 1874 E. Remington & Sons (a corporation) was engaged in the manufacture and sale of typewriting machines at Ilion, in the State of New York, but whether said E. Rem-

ington & Sons was succeeded in said business by the 49
Standard Typewriter Manufacturing Company, or whether the name of said Standard Typewriter Manufacturing Company was subsequently duly and lawfully changed to "Remington Standard Typewriter Manufacturing Company," respondent is not informed save by the allegations of the bill of complaint, and therefore respondent neither admits nor denies said allegations, but leaves complainant to make due proof thereof.

III.—Respondent is not informed save by the allegations of the bill of complaint as to whether or not said Standard Typewriter Manufacturing Company or the said Remington Standard Typewriter Manu- 50
facturing Company by purchase or otherwise became the lawful owner of all the tools, machinery, patterns, patent rights and personal property used by said E. Remington & Sons in its said business or continued to occupy the factory and premises theretofore occupied by said E. Remington & Sons, or acquired and became lawfully possessed of the good-will of said business or the trade names and trade-marks theretofore adopted and used therein by said E. Remington & Sons; nor is respondent advised save by the allegations of said bill of complaint as to whether the said Standard Typewriter Manufacturing Company or said Remington Standard Typewriter Company did own and use the said property, 51
patent rights, good-will, trade names and trade-marks of said E. Remington & Sons until the year 1892, and respondent therefore neither admits nor denies said allegations of the bill of complaint in such respect and leaves the complainant to make due proof thereof.

IV.—Upon information and belief respondent denies that complainant is the sole and lawful successor to the typewriter business of said E. Remington & Sons or of said Standard Typewriter Manufacturing Company or of said Remington Standard Type-

52 writer Manufacturing Company, or to the good-will of said business and of the trade-marks, trade names or designations used by said E. Remington & Sons or by said Standard Typewriter Manufacturing Company or by said Remington Standard Typewriter Manufacturing Company; and denies that said E. Remington & Sons and said Standard Typewriter Manufacturing Company or said Remington Standard Typewriter Manufacturing Company or either of them, ever had or has, or that complainant ever had or now has any lawful right by succession or otherwise to the exclusive use of the word "Remington" or of the words "Remington Standard" as trade-marks,
53 trade names or designations for typewriting machines, as in the bill of complaint alleged.

V.—Respondent, upon information and belief, admits that the typewriting machines manufactured by E. Remington & Sons and the typewriting machines manufactured by complainant have for a number of years past been commonly spoken of and referred to in trade parlance as the "Remington Standard" or "Standard Remington," and sometimes as the "Remington" typewriter, but respondent denies that (while said typewriting machines have been thus commonly spoken of or referred to), the trade or purchasing public has ever relied upon
54 these words to distinguish such typewriting machines from the typewriting machines of other manufacturers; on the contrary, respondent, upon information and belief, avers that for many years past, and since about the year 1881, it has been the practice not only of complainant, but also of its alleged predecessors in business, viz., the said Standard Typewriter Manufacturing Company, the said Remington Standard Typewriter Manufacturing Company and said E. Remington & Sons, to designate and distinguish the typewriting machines manufactured by said corporations by a special and distinctive trade-mark (registered in the United

States Patent Office by said Standard Typewriter 55
Manufacturing Company April 17, 1888), consisting of the picture or representation of a typewriting machine upon a circular, disc-shaped, red background having circumferential notches in imitation of an official seal, which said trade-mark was and is prominently and conspicuously displayed upon each machine and as well also upon the advertisements, letter-heads, circulars and signs of said corporations; and it has been the further practice of complainant and its alleged predecessors in order to further designate and distinguish the said typewriting machines from the typewriting machines of all other manufactures, to prominently display upon said machines the words "Remington Standard 56
Typewriter," together with a distinguishing number, and for at least several years past it has been complainant's practice to further mark its machines with the words "Manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A." That for many years past various different styles and makes of typewriting machines have been placed upon the market by different manufacturers, and that it has been a general and recognized practice of said manufacturers to mark their machines with the maker's name and address; that the trade and purchasing public has come to distinguish the typewriting machines manufactured by complainant and its alleged predecessors not by the word "Remington" nor by 57
the words "Remington Standard" alone, but by the above mentioned trade-mark, consisting of the picture or representation of a typewriting machine upon a circular disc-shaped, red background having circumferential notches in imitation of an official seal, by the words "Remington Standard Typewriter," by the arbitrary number placed upon the machine, by the words "Manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A.," and more especially has the trade and purchasing public come to distinguish the style of machine manufactured by complainant and its alleged prede-

58 cessors, by its general appearance and by the peculiarities of its mechanism, the imitation of which is precluded by the many Letters Patent owned by complainant and its alleged predecessors.

VI.—Respondent upon information and belief admits that on or about October 23, 1888, the Standard Typewriter Manufacturing Company did register in the United States Patent Office the word "Remington" or "Remington Standard" as alleged trade-marks for typewriting machines of its manufacture, but whether said words "Remington" or "Remington Standard" so registered as trade-marks were in or about the year
59 1892 duly assigned and transferred to complainant, this respondent is not advised save by the allegations of the bill of complaint, and therefore leaves the complainant to make such proof thereof as it may deem necessary; but respondent, upon information and belief, denies that the said Standard Typewriter Manufacturing Company or its successor in business ever had or now has, by virtue of said trade-mark registrations or otherwise any exclusive right to the use of said word "Remington" or the words "Remington Standard" as trade-marks for typewriting machines, or that said words "Remington" or "Remington Standard" constitute proper subject matter that could be appropriated by
60 any one as an exclusive trade-mark for typewriting machines.

VII.—Further answering this respondent says that it is informed and believes and therefore avers the fact to be that prior to the month of May, A. D. 1894, Franklin Remington, Carver Remington and Zalmon G. Sholes associated themselves together for the manufacture and sale of typewriting machines; that said Franklin Remington and said Carver Remington were sons of Samuel Remington, who was one of the officers of the corporation E. Remington & Sons referred to in the bill of complaint, and that

the said Zalmon G. Sholes was the son of one C. Latham Sholes, who for many years prior to his death (on or about the year 1891) was engaged as an inventor of typewriting machines; that said Franklin Remington, said Carver Remington and said Zalmon G. Sholes did during the lifetime of their respective fathers acquire a special interest in and knowledge of the manufacture of typewriting machines, and naturally, therefore, devoted themselves to the business in which their respective fathers had become conspicuously proficient. That prior to his joining with said Franklin Remington and said Carver Remington, said Zalmon G. Sholes had invented a certain new and useful typewriting machine and desiring to place the same upon the market, enlisted the interest of said Franklin Remington and said Carver Remington, who thereupon proceeded to devote much time and money to the development and exploiting of said invention and for the purpose of interesting capital therein. That inasmuch as the said new typewriting machine had been invented by said Zalmon G. Sholes and had been built with the aid of and under the personal direction of said Franklin Remington and said Carver Remington, the name "Remington-Sholes" was thereupon naturally given to said machine, the production of which had been due to the joint efforts of said Remingtons and said Sholes. 61 62

VIII.—That in or about the year 1894 said Franklin Remington and said Carver Remington and said Zalmon G. Sholes associating with themselves Charles N. Fay and Franklin H. Head of Chicago, Illinois, organized or caused to be organized a corporation under the laws of the State of Illinois, and gave to said corporation the name "Remington-Sholes Typewriter Company"; that the main object of said corporation was the manufacture and sale of the typewriting machine that had theretofore been produced by the said Sholes and the said Remingtons, and had been designated as the "Remington- 63

64 Sholes" machine; that a large part of the stock of the said Remington-Sholes Typewriter Company was owned by said Remingtons and by said Sholes, and from the organization of said company the said Franklin Remington acted as secretary, treasurer and general manager of said corporation, and the said Zalmon G. Sholes acted as superintendent of said corporation, and both said Franklin Remington and said Zalmon G. Sholes devoted their time exclusively to the business of manufacturing and selling said typewriting machines.

IX.—Further answering, respondent avers upon information and belief that prior to the organiza-
65 tion of said Remington-Sholes Typewriter Company, neither the said Franklin Remington nor said Carver Remington nor said Zalmon G. Sholes had ever in any manner whatsoever relinquished the right to use the name "Remington," or the name "Sholes," or the words "Remington-Sholes" in connection with the manufacture or sale of typewriting machines, or in connection with any other business; and respondent therefore avers that when said Franklin Remington, said Carver Remington and said Zalmon G. Sholes undertook the manufacture of the typewriting machine devised and constructed by them, they had a full and lawful right to designate the said machine as the "Remington-Sholes" machine,
66 and that when they caused a corporation to be organized for the purpose of manufacturing their machine, they had a full and lawful right to designate and name said corporation as the "Remington-Sholes Typewriter Company," and to give to said corporation as they did the exclusive right to use said name in connection with the manufacture and sale of said machine; that if the name "Sholes" or if the names "Sholes & Glidden" had ever been known to or associated by the trade or purchasing public in connection with typewriting machines manufactured by complainant's alleged predecessors in business, said names have many years since been

abandoned by complainant or its alleged predecessors and have ceased to be known to or associated by the purchasing public in connection with the typewriting machines of complainant's manufacture. 67

X.—Respondent further answering, says that from the year 1894 until the year 1897, the said Remington-Sholes Typewriter Company expended many thousands of dollars in building typewriting machines embodying the inventions of said Zalmon G. Sholes and in placing said machines before the purchasing public; that as the result of said expenditure a large number of such machines were sold and became widely and familiarly and favorably known to the purchasing public as the "Remington-Sholes" typewriter. 68

XI.—Upon information and belief respondent further says that a short time prior to the month of April, A. D. 1897, said Charles N. Fay for valuable consideration purchased the whole of the machinery, tools, stock and other tangible personal property of said Remington-Sholes Typewriter Company, together with the good-will of the business of said company and the exclusive right to the trade-marks, trade names and like indicia theretofore used in and about said business; that the exclusive right to the trade-mark or trade name "Remington-Sholes" was a most valuable asset of said business so purchased by said Fay, as it was by such trade-mark or trade name that the machines theretofore manufactured by said Remington-Sholes Typewriter Company had acquired so widespread and favorable a reputation both in the United States and foreign countries; that after the aforesaid purchase by said Fay of the business, good-will, &c., of said Remington-Sholes Typewriter Company, he, the said Fay, continued to carry on said business at the established factory of said Remington-Sholes Typewriter Company and continued to manufacture and sell the style of typewriting machine theretofore manu- 69

70 factured by said company and to use in connection with said business the trade-mark or trade name "Remington-Sholes"; that on or about April 12, 1897, the charter of said Remington-Sholes Typewriter Company was lawfully surrendered, and in the said month of April, 1897, the Remington-Sholes Company was organized under and by virtue of the laws of the State of Illinois; that the principal incorporators and officers of said Remington-Sholes Company from the date of its organization have been said Charles N. Fay, said Franklin H. Head and said Franklin Remington, said Remington holding the position of general manager of said company; that the main
71 object of said Remington-Sholes Company was and now is the manufacture and sale of the typewriting machine (with certain improvements thereon) theretofore constructed by said Franklin and Carver Remington and said Zalmon G. Sholes, and for which the said Remington-Sholes Typewriter Company and said Fay had created and maintained so widespread and favorable a reputation under the name and style of the "Remington-Sholes" Typewriter throughout the markets of the world; that said Remington-Sholes Company by purchase for valuable consideration from said Fay, became the lawful successor in business to said Fay and to said Remington-Sholes Typewriter Company and to all the
72 machinery, tools, stock and other tangible personal property and as well also the good-will of the business and to all trade-names, trade-marks and the like theretofore used by said Fay and said Remington-Sholes Typewriter Company in and about his and its said business and particularly to the exclusive right to the use of the words "Remington-Sholes" as a trade-mark or trade-name for typewriting machines.

I.—Further answering on information and belief respondent says that from the time when said Remington-Sholes Typewriter Company first began

to market its machines it was its practice not only to 73
mark said machines with the words "Remington-Sholes," but also to prominently display upon said machines in juxtaposition to said words "Remington-Sholes" the word "Chicago" as indicative of the place of manufacture of said machines and as distinguishing its said machines from those of complainant, the place of manufacture of which, viz., "Ilion, New York, U. S. A." is conspicuously marked upon complainant's machines and is familiarly known as such to the trade and purchasing public; that from the inception of its business it was the endeavor of said Remington-Sholes Typewriter Company to use every reasonable precaution to prevent any possible confu- 74
sion of its machines with the machines manufactured by complainant; that in furtherance of this end it was the practice of said Remington-Sholes Company not only to mark its machines with the words "Remington-Sholes," and with the word "Chicago," but also in its advertisements of said machines and upon the packing cases wherein said machines were enclosed and as well also upon its circulars, letter-heads, signs, &c., to distinctly and prominently display the words "Not the Remington Standard," and that in similar fashion said Fay and said Remington-Sholes Company have used like precaution.

75
XIII.—Respondent further answering says, that shortly after the organization of said Remington-Sholes Company in the year 1897, it adopted as a trade-mark for its typewriting machines and as a further means of distinguishing said machines from all others upon the market, the fanciful and newly coined word "Rem-Sho" and on or about October 19, 1897, it caused said word to be duly and lawfully registered in the United States Patent Office as a trade-mark for typewriting machines, the Certificate of Registration being numbered 30,719.

76 XIV.—Further answering upon information and belief respondent says, that the said Franklin Remington and said Carver Remington and said Zalmon G. Sholes, and as well also said Remington-Sholes Typewriter Company and said Remington-Sholes Company, used every reasonable effort to produce a typewriting machine differing both as to its mechanism and as to its appearance from the typewriting machines of complainant or other manufacturers; that in order to give the typewriting machine of its manufacture an appearance that should not only prove attractive to the public, but also should serve to distinguish said typewriting machine from all others in the market; said Remington-
77 Sholes Typewriter Company at large expense, caused a special design of ornamental frame to be made for its said machine; that as the result of the use of the words "Remington-Sholes" and the word "Chicago" prominently displayed on every machine and as well also, because of the difference in appearance and because of the wide difference in the construction and mode of operation of its machine from all other machines upon the market, the said machine of said Remington-Sholes Typewriter Company and its successors, became distinctively known to and recognized by the purchasing public and acquired a favorable reputation in the markets of the world.

78 XV.—Further answering, respondent says that because of the fact that said Remington-Sholes Typewriter Company used all reasonable precautions to avoid confusion of its typewriting machines, with the machines of other manufacturers, and to apprise the public of the true origin of its machine, which said precautions have been followed by said Fay and by Remington-Sholes Company, this respondent is informed and believes and so avers the fact to be that the purchasing public has come to recognize the said typewriting machines manufactured by said Remington-Sholes Typewriter Company, and by

said Fay and by said Remington-Sholes Company, as a distinct machine of great merit; and that any intending purchaser using reasonable precaution and having sufficient intelligence to operate a typewriting machine, cannot possibly be mistaken into purchasing the machine manufactured by the Remington-Sholes Typewriter Company or by said Fay or by said Remington-Sholes Company, as and for the machine of complainant's manufacture. 79

XVI.—Further answering, upon information and belief, respondent denies that the organization and incorporation of said Remington-Sholes Company was with the intent to unlawfully and wrongfully appropriate any of the benefits or advantages of the reputation acquired by complainant's machine or with a view to trespass in any manner upon complainant's alleged exclusive right to the use of the words "Remington" or "Remington Standard" as a designation for its typewriting machines. 80

XVII.—Respondent further answering denies that the said Remington-Sholes Company or its officers or agents have, or that this respondent has adopted the word "Remington" or marked, stamped or placed the same on typewriting machines, or intend so to do; and respondent further denies that the said Remington-Sholes Company and this respondent have advertised their machines in publications, catalogues or otherwise, or sold, or offered the same for sale, as "Remington" typewriters, or have any intention of so doing; but respondent admits that said Remington-Sholes Company and this respondent have advertised the typewriter manufactured by said Remington-Sholes Company and sold by this respondent as its agent, as "Remington-Sholes" typewriters and as "Rem-Sho" typewriters, as they had a lawful right to do, and that said sales have occurred since the first day of May, 1897, and prior to the filing of the bill of complaint in this cause and 81

82 within the cities and States specifically mentioned in the bill of complaint.

XVIII.—Further answering respondent denies that the public or intending purchasers or users of typewriting machines have ever been deceived or misled or could be deceived or misled by reason of the manner in which this respondent or the Remington-Sholes Company has marked, designated, advertised or offered for sale typewriting machines manufactured by said Remington-Sholes Company; and further denies that said typewriting machines have been placed upon the market as, or have been marked or referred to as, or have been offered for
83 sale as "Remington" typewriters or as species thereof, or are accepted as or understood to be typewriting machines of complainant's manufacture.

XIX.—Further answering this respondent denies that the said Remington-Sholes Company and this respondent have in any way fraudulently diminished the sales of complainant's machines or have in any way engaged in unfair and injurious competition with complainant and further denies that by the use of the words "Remington-Sholes Company," the words "Remington-Sholes" and the word "Rem-Sho" this respondent or the Remington-Sholes Company has been enabled or will be enabled
84 to place the machines of the said Remington-Sholes Company upon the market and to accomplish the sale thereof as and for the machines of complainant's manufacture or as a species thereof, or as made under complainant's authority and direction.

XX.—Further answering upon information and belief, respondent denies that there has been any fraudulent purpose on behalf of this respondent to market and sell typewriting machines of said Remington-Sholes Company's manufacture upon the established reputation of complainants or its alleged

predecessors in business; and respondent denies that 85
the scheme of the incorporation of said company under the name "Remington-Sholes Company," or that the acts of said company, or of this respondent, have been in any manner a fraudulent attempt to divert to this respondent, or to said company, the good-will and reputation of complainant, or have worked in any manner an unfair and fraudulent competition in trade.

XXI.—Further answering, respondent admits that it has been for some time past and now is acting as sales agent of said Remington Sholes Company, and that respondent is engaged in selling typewriting machines manufactured by said Remington-Sholes 86
Company and designated and marked with the word "Rem-Sho" and with the words "Remington-Sholes Company, Chicago"; but respondent denies that it was ever marked or caused to be marked, sold or offered for sale, or intends so to do, any typewriting machines with any words, marks or devices thereon in violation of any lawful rights of complainant, and denies further that respondent has in any manner unlawfully trespassed upon or violated any lawful rights of complainant, or that respondent had derived any profits or benefits from any trespass upon complainant's rights.

XXII.—Further answering, respondent avers, on 87
information and belief, that during the past three years the said Remington-Sholes Company and its predecessors have created and maintained a very large trade for typewriting machines not only in the United States but also in foreign countries and particularly in the German Empire; that said machines have been marked with the words "Remington-Sholes Company, Chicago," and have been sold as the "Remington-Sholes" typewriting machines and of late as the "Rem-Sho" typewriting machines. That in or about the month of February, A. D. 1896, this complainant through its Berlin agents, caused

88 to be entered as a trade-mark in the Register of the Imperial Patent Office at Berlin, the word "Remington" as a trade-mark for typewriting machines and their parts, and that later in said year A. D. 1896, this complainant in the name of its German agents, Messrs. Glogowski & Son, caused a suit to be brought in the proper court of Berlin having jurisdiction of such matters, against one Henry Newald then and there engaged in selling machines manufactured by the Remington-Sholes Typewriter Company and marked with the words "Remington-Sholes, Chicago," and sold by said Newald under the name of "Remington-Sholes" typewriter; that the purpose of said suit was *inter alia* to establish in
89 complainant's said agents, the exclusive right to the use of the word "Remington" as a trade-mark for typewriting machines, and to enjoin said Newald from using the word "Remington" in connection with the sale of typewriting machines; that after proofs taken, arguments of counsel and other due proceedings had the said Court rendered its decision in favor of said Glogowski & Son but that thereafter the said Newald appealed from said decision to the Konigliches Kammergericht (Supreme Court of Judicature) at Leipsic, which tribunal under the laws of Germany had full jurisdiction in such matter and was the appropriate and competent one for the hearing of such appeal;
90 and that said Konigliches Kammergericht after full consideration of the matters and proceedings of said lower court, reversed the decision of said lower court and held *inter alia* that the exclusive right to use said word "Remington" as a trade-mark for typewriting machines did not reside in complainant's agents, and that inasmuch as the right to use the name "Remington-Sholes" was properly derived by said Remington-Sholes Typewriter Company from Franklin and Carver Remington and Zalmon G. Sholes, the said machines manufactured by said Remington-Sholes Typewriter Company and sold by said Newald could be properly and lawfully

marked with said word, and said machines could be properly and lawfully sold as the "Remington-Sholes" typewriting machines; that said litigation, while conducted in the name of said Glogowski & Son, was in fact prosecuted by and on behalf of complainant herein, the proofs and all other proceedings therein had, being at the expense of and under the control of this complainant; wherefore, respondent is advised, and therefore avers that complainant cannot now be heard to assert as against said Remington-Sholes Company, or as against respondent, its agent, that the exclusive right to the use of the word "Remington" as a trade-mark or trade-name for typewriting machine is vested in complainant, or that said Remington-Sholes Company, or respondent, has not a right to the use of the words "Remington-Sholes" in connection with the sale of typewriting machines of said Remington-Sholes Company's manufacture. 91 92

XXIII.—Further answering respondent denies that complainant has any right to an account for damages, profits, gains, charges or costs to be recovered from this respondent; denies said complainant's right to an injunction either provisional or perpetual; and denies that said complainant is entitled to any other or further relief whatever against this respondent.

And respondent craves leave to take benefit of the foregoing answer and of the defenses by it pleaded, with the same force and effect as if it had demurred to said bill of complaint where a demurrer had been proper, and as if it had entered special plea thereto where such plea had been proper. 93

Without this, that any other matter, cause or thing in said complainant's bill of complaint contained, material or necessary for this respondent to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge and belief of this respondent.

94 All of which matters and things this respondent stands ready and willing to aver, maintain and prove as this Honorable Court may direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

HOWE SCALE CO. OF 1886,
By JOHN A. MEAD,
Pres't.

GEO. P. FISHER, Jr.
Of Counsel.

STATE OF VERMONT, }
County of , } ss.:

95 JOHN A. MEAD, of the City of Rutland, being duly sworn, deposes and says: I am the president of the Howe Scale Company of 1886, respondent in the above entitled cause, and have signed said answer on behalf of said respondent. I have read said answer and know the contents thereof; the same is true to my knowledge, except as to matters stated on information and belief and as to all such I believe said answer to be true.

JOHN A. MEAD.

Subscribed and sworn to before me this 25th day of November, A. D. 1898.

F. M. BUTLER,
96 Notary Public.

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CLERK'S OFFICE, U. S. CIRCUIT COURT,
DISTRICT OF VERMONT.

BURLINGTON, December 14, A. D. 1898.

I hereby certify that the above and foregoing is a true copy of the original hereof now remaining on file in my office.

(Signed) GEO. E. JOHNSON,
Clerk.

UNITED STATES CIRCUIT COURT, 97

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

vs.

THE HOWE SCALE COMPANY OF 1886.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF VERMONT: 98

This repliant Wyckoff, Seamans & Benedict now and at all times hereafter saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, for replication thereto, saith that it doth and will ever maintain and prove its complaint herein to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, untrue and insufficient in the law to be replied unto by this repliant, without that, that any other matters or things in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by this said bill of complaint already prayed. 99

(Signed) W. L. BURNAP,
Solicitor for Complainant-Repliant.

100 UNITED STATES CIRCUIT COURT

FOR THE DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT<br>vs.<br>THE HOWE SCALE COMPANY OF 1886. | In Equity. |

Please take notice that the complainant herein
101 will take the testimony of Thos. Richardson and W. K. Jenne, who reside at Ilion, in the State of New York, and others, each and all of whom reside more than one hundred miles from the place of trial herein, and more than one hundred miles from any place at which a Circuit Court of the United States for the District of Vermont is appointed to be held by law, for use on behalf of the complainant at final hearing, before John A. Shields, United States Commissioner, in and for the Southern District of New York, who is not of counsel nor interested in this cause, at the office of H. D. Donnelly, Esq., in the Stewart Building, No. 280 Broadway, New York City, on the 21st day of February, A. D. 1899, be-
102 ginning at 11 o'clock in the forenoon of that day, and continuing from day to day until completed. Such testimony will be taken under and in accordance with the provision of Sections 863, 864 and 865 of the Revised Statutes of the United States, and the Equity Rules.

You are requested to be present and cross-examine if you desire to do so.

Dated Feb. 6, A. D. 1899.

W. L. BURNAP,
Complainant's Solicitor.

To Messrs. BUTLER & MALONEY,
Respondent's Solicitors.

RUTLAND, VT., Feb. 6, 1899. 103

Having received a copy of the within notice, we accept service thereof to have same effect as if properly served by regular officer as of this date.

BUTLER & MALONEY,
Respondent's Sol'rs.

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## UNITED STATES CIRCUIT COURT,

### DISTRICT OF VERMONT.

104

WYCKOFF, SEAMANS & BENEDICT

vs.

THE HOWE SCALE COMPANY OF 1886.

In Equity.

It is hereby stipulated and agreed by and between the parties to the above entitled action that the testimony herein may be taken orally, or by commission, or both, under and pursuant to Equity Rule 67, as amended, of the Supreme Court of the United States, and that said testimony may be taken before any standing examiner of this Court, or before any special examiner appointed therefor by this Court, or before any United States Commissioner, notary public or any other officer authorized by the United States Revised Statutes, or the equity rules, to administer oaths and take testimony either orally or by commission. That the testimony so taken orally or by commission may be filed with the Clerk of this Court and the same may be read and used at the final hearing of this cause with the same force

105

106 and effect as if taken before a standing examiner of this Court, or one specially appointed, and that an order to that effect may at any time hereafter be entered in this Court by either party without notice to the other party.

Dated Feb. 21, 1899.

W. L. BURNAP,
Solicitor for Complainant.
By H. D. DONNELLY,
Of Counsel.

PEIRCE & FISCHER,
Solicitors and of Counsel for Deft.

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107 UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT<br>AGAINST<br>THE HOWE SCALE COMPANY OF 1886. | In Equity. |

TESTIMONY taken on behalf of the complainant before L. M. Beehan, a Notary Public in and for the County and State of New York, and Special
108 Examiner by consent, under and pursuant to the annexed stipulation, at the office of Messrs. Donnelly & Felbel, No. 280 Broadway, New York, on Tuesday, February 21, 1899, at 11 o'clock A. M.

APPEARANCES:

H. D. DONNELLY, Esq., for Complainant.
GEORGE P. FISHER, Esq., Counsel for Defendant.

THOMAS RICHARDSON, called as a witness on behalf of the complainant, being duly sworn, testifies as follows,

By Mr. Donnelly: 109

1 Q. State your name, age, residence and occupation? A. My name is Thomas Richardson; age, sixty-eight years; residence, Ilion, New York; occupation, attorney and counsellor at law.

2 Q. For how many years have you been an attorney and counsellor at law, and where have you practiced your profession? A. I was admitted to the Bar in 1861. I practiced for three years at Frankfort, within about two miles of Ilion, and I moved to Ilion in 1864 and have resided and practiced my profession there ever since.

3 Q. State whether you have ever at any time known a concern doing business under the name of E. Remington & Sons, and when you first became 110 cognizant of the fact that there was such a concern? A. If you refer to the copartnership E. Remington & Sons, as I assume you do by your question, I knew of such a concern as far back as about 1858; perhaps a little earlier. I became personally acquainted with the junior members of that copartnership, that is, the sons, in 1864. The old gentleman, the father, E. Remington, was then dead, having died, I think, about 1863.

4 Q. What was the business of that copartnership when you first became aware of such a concern and prior to 1865, if you know? A. Principally, if not almost exclusively, the manufacture of firearms, what are known in the art as small arms, both 111 sporting and military.

5 Q. Do you know whether that copartnership ceased at any time, and whether any other concern was afterwards organized under the name E. Remington & Sons, and if so, state when? A. Early in January, 1865, the three brothers forming the sons in the copartnership, whose names, giving them in the order of their ages, were Philo Remington, Samuel Remington and Eliphalet Remington, organized the corporation E. Remington & Sons under the laws of the State of New York, using what had

112 theretofore been the copartnership name as the corporate name, and the copartnership conveyed to the corporation all its property and franchises and from that time ceased to do business, the corporation succeeding to that business and continuing thereafter to conduct and carry it on.

Complainant's counsel here offers in evidence an exemplified copy of the certificate of incorporation of E Remington & Sons, and the same is marked "Complainant's Exhibit Certificate of Incorporation of E. Remington & Sons."

6 Q. After the corporation E. Remington & Sons was formed in 1865, what relations, if any, did you
113 sustain to said corporation; what interest did you take in it, legal and otherwise, and how long did those relations continue? A I commenced to transact some professional business for them as early as 1865. In about 1866 or 1867 I became their general and local counsel, and I continued such until March, 1886, when the corporation was wound up. My relations, however, with the corporation were not by any means confined to questions of mere legal import or bearing, but I was frequently consulted by them with reference to matters of business policy and scarcely ever, I think I might safely say, a week went by without something of this kind taking place I went to Europe on their business
114 and at their request four times on matters partially legal and partially of business policy, once in 1868, twice in 1871, and again in 1874. I might say also, that I held a power of attorney from Mr. Samuel Remington when he was in Europe, as he was substantially all the time from 1866 or 1867 to the fall of 1877, authorizing and empowering me to act as his attorney and represent his interests in the corporation E. Remington & Sons.

7 Q. If you know, state generally and without detail what business E. Remington & Sons carried on, that is to say, what articles they manufactured and sold, between the years 1865 and 1886?

A. They manufactured firearms, cartridges for the same, sewing machines, typewriters and a number of other smaller and less important matters. I don't mean to be understood that they manufactured sewing machines and typewriters as early as 1865. They commenced the manufacture of sewing machines about 1870, and the manufacture of typewriters in 1873. They manufactured firearms all the time that I have stated. 115

8 Q. State to what extent, if you know, the corporation E. Remington & Sons manufactured and sold firearms and sewing machines between 1865 and 1886, and under what names such articles were sold and where, so far as you know? A. They manufactured firearms during the War of the Rebellion, first the copartnership in the earlier stages of it, and then the corporation in the later period of the war, for the United States Government, quite largely. At the close of the war, or shortly after that, the Governments of Europe, particularly, had their attention called to the apparent desirableness of a breech-loading military rifle in consequence of the success that the Prussians had met with in the war between them and Austria at about that time, and which was attributed quite largely to the supposed superiority of the Prussian needle gun, which was a breech-loading firearm. E. Remington & Sons turned their attention to producing an acceptable and serviceable breech-loading rifle, and they got one out in 1866, which then and ever afterwards and is to-day known as the Remington. Early in 1867 they contracted for a large number, fifteen or twenty thousand, with the Government of Denmark, and at about the same time for a similar number, or a larger number, I am not quite sure which, with the Government of Sweden. They afterwards manufactured and sold that arm under that name, and known all over Europe, in Egypt, in the United States and all over South America, to Spain, the Papal States, Egypt, France and almost all the Central and South American States, to Cuba and Porto 116 117

118 Rico, to the Government of the State of New York, to the United States Government and to one or more of the other State Governments of the United States, They increased the productive capacity of their works so that at one time they manufactured as many as one thousand finished guns per day. With reference to sewing machines, they manufactured those quite largely for several years, established offices in most of the principal cities of the United States, and that machine was also known as the Remington sewing machine.

9 Q. If you know, state to what extent the name Remington, as applied to firearms and sewing machines, was known prior to 1886? A. I can only
119 answer that by saying it was exceedingly well-known all over Europe, and also I omitted to say in my previous answer the Remington arm was supplied to China, to Japan, and the name Remington was known there. I think that I would be entirely safe in saying that the name was well-known to every Government in Europe, and to every Government in Central and South America, and extensively throughout the length and breadth of the United States. Besides the Remington rifle, they manufactured revolvers and sporting arms, which had a favorable reputation all over this country and which were known by the name Remington.

10 Q. You have stated in a previous answer that
120 E. Remington & Sons commenced the manufacture of typewriters in 1873. What time in 1873 did they take up the typewriter with a view to manufacturing it, and state briefly what you know with regard to the original transaction whereby E. Remington & Sons took up the manufacture of typewriting machines? A. In February, 1873, I was sent for to go to the office of E. Remington & Sons, and on my arrival I found there James Densmore and George W. N. Yost, who had a typewriter which they had brought to the office of E. Remington & Sons with the view of interesting that corporation in the manufacture

of it. Mr. Philo Remington, who was at the head 121
of the manufacturing department, and Mr. Smoot, who was the manager of the works, were present. We examined the machine and discussed the matter then somewhat, the principal question being at that time as to whether such a machine was or would ever become a useful article or an article of use, or whether it would be a mere trap or toy, there being quite a difference of opinion among the various parties there present on that subject. Afterwards, as I understood, in fact I know, Mr. Clough, who was then the superintendent of the works, and Mr. William K. Jenne, who occupied a position of some prominence in the manufacturing department, were called in and the matter was submitted to their ex- 122
amination and judgment, and there was a conclusion arrived at that the corporation would take hold of the manufacture of machines, and there was a contract entered into at or about that time, between James Densmore and George W. N. Yost of the one part and E. Remington & Sons of the other part, and which was subsequently confirmed and assented to by C. Latham Sholes, who was understood to be interested in some of the patents under which the machine was made.

11 Q. I show you a paper writing and ask you to examine the same, and, after having examined it, say, if you know, what it is? A. This is the contract to which I referred in my last answer, and on 123
the back of it is written in my handwriting an assent to or confirmation of the same by Mr. Sholes.

12 Q. Will you please examine the several signatures subscribed to said contract, and say whether you are acquainted with the several signatures thereto subscribed, and if so, in whose handwriting they are? A. I am acquainted with the handwriting of all parties who purport to have subscribed the agreement. The words "E. Remington & Sons, W. C. Squire, Secy.," are in the handwriting of Watson C. Squire, who was at that time the secretary of the corporation E. Remington & Sons. The

124 names "James Densmore and G. W. N. Yost" are in the handwriting of those parties respectively. The assent or confirmation written on the back of the contract is signed by C. Latham Sholes, and is in his handwriting. The seal attached to the agreement or contract is the corporate seal of E. Remington & Sons.

The calling of the subscribing witness to the execution of said instrument is waived.

Counsel for complainant offers in evidence the instrument which has been shown to and identified by the witness, and the same is marked "Complainant's Exhibit Remington-Densmore-Sholes and Yost Original Contract."

125

13 Q. At the time Densmore and Yost visited Ilion, February, 1873, and the contract which has just been put in evidence was made, did they bring with them any typewriting machine or machines, and if so what was the character of those machines as to being crude or otherwise, if you know? A. They brought with them, as I have already stated, one typewriting machine and only one, which was then exhibited to the corporation, and to the others of us that were called in to counsel, as I have already stated, and which was then and there examined by us. It was the first typewriting machine that any of us, with the exception of Densmore and Yost, had ever
126 seen, and was the subject of considerable curiosity. It was a clumsy, crude, hand-made and poorly fitted up machine. It had only one set of letters, what are known as capital letters, and in that respect differed from the machine as afterwards constructed by E. Remington & Sons and all the modern machines, which have two sets of letters, capitals and small letters. The carriage of the machine was moved backwards and forwards transversely to the operator by means of a treadle and a clumsy contrivance connecting it with the machine.

14 Q. At the time Densmore and Yost visited Ilion, and the original contract was made of date

February 28, 1873, was C. Latham Sholes present at Ilion, and did he have anything to do there in the original transaction? A. He was not present at Ilion and he had nothing to do with the making of the contract named, but, as I have already stated, he afterwards confirmed it, but that was done by correspondence, as he was not at any time, so far as I am aware, and I feel quite certain on that subject, ever at Ilion. 127

15 Q. If you know, state whether all the Remington brothers, that is, Philo, Samuel and Eliphalet Remington were at Ilion and participated in the making of the original contract between E. Remington & Sons and Densmore and Yost, and if all of them were not present state which of them were present and what you know on that subject? A, Mr. Philo Remington was present and it may be that Watson C. Squire was present in addition to the ones I have mentioned in a previous answer. I don't think that Eliphalet Remington was present, and I know that Samuel Remington was not present, as he was at that time in Europe or in Egypt, one or the other. 128

16 Q. If you know, please state how long it was after the original contract was made, February, 1873, before Samuel Remington returned to Ilion or to this country? A. He did not return until the day before Thanksgiving Day in 1877. I met him in New York, at his request, on his landing there from the vessel. 129

17 Q. After E. Remington & Sons made the original contract with Yost and Densmore in 1873, state, if you know, what they did in the way of manufacturing typewriting machines from that time forward until 1886, when you say the corporation dissolved or ceased to manufacture typewriting machines? A. Mr. Clough and Mr. Jenne, whom I have in a previous answer mentioned as being called into consultation with reference to the policy of taking hold of the manufacture of the machines by E. Remington & Sons, were by Mr. Densmore and Mr.

130 Yost made interested in it, and in its improvement and success, by agreeing to pay to those gentlemen a certain sum or royalty on each machine manufactured by E. Remington & Sons, in the case of Mr. Clough one dollar per machine, and in the case of Mr. Jenne forty-five cents per machine, in order to secure the benefit of their skill and practical experience in reorganizing and improving the machine, and they set about making a new machine differing in many respects from the machine brought there by Densmore & Yost, and in getting out three sample machines, I think it was, which the contract of February 28, 1873, called for. They made improvements which were the subject, some of them
131 at least, of United States Letters Patent which were afterwards issued to Clough & Jenne, and which were embodied in the three sample and succeeding machines, some or all of them. They then went on and manufactured, in the first instance, only a small quantity per diem, and delivered them under the contract. I ought perhaps to state that the manufacture of almost any machine of any complication, other than by hand, requires the making of what are known in the art as special tools, and those were gotten up and made. Densmore and Yost experienced difficulty in marketing the machines, owing to the fact which I have already suggested, that there was grave doubt among
132 people to whom the machines were exhibited, or to whose attention it was called, as to whether it was or would ever be anything more than a sort of toy, and at least one copying office, as it was called, was established in Broadway, New York, with a view of educating operators, of which there were none then existing, and of doing copying for legal firms and business establishments, with a view of showing the utility and desirableness of the machine. As is obvious from an examination of the contract of February 28, 1873, E. Remington & Sons had nothing to do with the sale of the machines, as they were to be manufactured for Densmore and Yost and paid

for by them, but it became evident in the history of 133
the thing, after various experiments and changes made by Densmore and Yost, that they did not have the means or facilities for marketing the machine. E. Remington & Sons had at that time invested a large amount of money—I think I have heard them state as high as two hundred thousand dollars, in the experimenting, improving, making tools for the manufacture of, and procuring material and in making the machines, and a radical change in the relations of the parties was considered to be both desirable and necessary, and in November, 1875, a new contract was entered into between a corporation which I will mention by-and-by, named "The Typewriter Company," of the first part, and E. 134
Remington & Sons of the second part, whereby the exclusive right to manufacture, use and sell typewriting machines of the class and character already alluded to was conferred upon E. Remington & Sons. I ought, perhaps, to have premised by saying that in January, 1875, the corporation to which I have just referred, The Typewriter Company, was organized under the laws of this State by James Densmore and others, to which corporation were conveyed the patents owned by various parties prior to that under which this typewriting machine was manufactured. After the contract of November, 1875, E. Remington & Sons continued to manufacture this typewriting machine with such 135
improvements and additions as were from time to time made and added at their works at Ilion, until March, 1886, and the machines were not only manufactured by them but were sold by them. In 1877 it became manifest that a machine was desirable which should have what are called in the art an upper and lower case, that is to say, to have both capital letters and small letters. The machines made by E. Remington & Sons up to that time had been all of the upper case character, and were afterwards, when they came to make machines of a different class, designated as a No. 1 machine. In 1877,

136 as I have already stated, the attention of E. Remington & Sons was called to the getting up of an improved machine such as I have just referred to, and they did get one up and manufactured the first one, I think, about September, 1877, that is, finished it, and that was what is designated as No. 2 machine, having an upper and lower case. This change rendered necessary a complete reorganization of the machines, which was done by E. Remington & Sons in their factory at Ilion and under the supervision principally of William K. Jenne, who had charge of the manufacture of typewriting machines from its very inception in 1873 down to 1886, when E. Remington & Sons disposed of that
137 branch of their manufacture, as will hereafter appear, and who has had and has to-day under the successors of E. Remington & Sons the superintendence and management of the manufacture of the Remington typewriter. In this reorganization of the machine it became necessary to use other independent inventions, some of which were made at the works of E. Remington & Sons, and by their skilled employees, and some of which were purchased by E. Remington & Sons, and which were the subject of patents, and I refer particularly in this connection to Letters Patent of Byron A. Brooks, which was absolutely essential to the manufacture of the Remington No. 2 typewriter. There was also
138 a patent of Lucien S. Crandall, a half interest in which was owned by George W. N. Yost, and under which half interest it was considered allowable for E. Remington & Sons to use Crandall's invention so far as it entered into the machine. These Letters Patent were afterwards purchased, or the remaining interest in them, by or for the Remington Standard Typewriter Manufacturing Company.

Counsel for the complainant offers in evidence an exemplified copy of the certificate of incorporation of The Typewriter Company, filed in the office of the Secretary of State, on the 5th

day of February, 1875, and the same is marked 139
"Complainant's Exhibit Certificate of Incorporation of The Typewriter Company."

Counsel for complainant offers in evidence an assignment of certain patents and patented interests from Sholes to Densmore and Yost, dated September 1, 1874. The paper offered in evidence is signed by Sholes, Densmore and Yost, and The Typewriter Company. Proof of signatures and execution of the assignment is waived. Marked "Complainant's Exhibit Assignment of Sholes to Densmore and Yost."

Counsel for complainant also offers in evidence the following original assignments:

(1.) Assignment of Emmet Densmore of one- 140
tenth interest to James Densmore and G. W. N. Yost, dated August 10, 1874; the same is filed in evidence and marked "Complainant's Exhibit Emmet Densmore's Assignment to Densmore and Yost."

(2.) Assignment of Amos Densmore to The Typewriter Company, dated January 6, 1875, and the same is filed in evidence and marked "Complainant's Exhibit Amos Densmore's Assignment to The Typewriter Company."

(3.) Assignment from Emmet Densmore to The Typewriter Company, dated December 1, 141
1875, and the same is filed in evidence and marked "Complainant's Exhibit Emmet Densmore Assignment to The Typewriter Company."

(4.) Assignment from James Densmore to The Typewriter Company, dated December 23, 1875, and the same is filed in evidence and marked "Complainant's Exhibit James Densmore's Assignment to The Typewriter Company."

Proof of formal execution of these several assignments which have been offered in evidence is hereby waived by defendant's counsel.

142 Counsel for complainant next offers in evidence the original contract between E. Remington & Sons and The Typewriter Company, dated November 1, 1875, and the same is marked "Complainant's Exhibit Typewriter-Remington Contract of November 1, 1875."

Defendant's counsel waives proof of formal execution of said contract, both as to the parties thereto and the subscribing witnesses.

Counsel for complainant next offers in evidence two original contracts or agreements between George W. N. Yost and The Typewriter Company and E. Remington & Sons, dated October 28, 1878, signed by G. W. N. Yost,
143 and the same are filed in evidence and marked "Complainant's Exhibit Yost Agreements of October 28, 1878, Nos. 1 and 2."

Defendant's counsel waives proof of the signature of Mr. Yost and of formal execution of said contracts.

Counsel for complainant next offers in evidence an assignment of Letters Patent of the United States No. 191,382 by Charles H. Stanton to The Typewriter Company, and the same is filed in evidence and marked "Complainant's Exhibit Assignment of Stanton Patent."

Proof of the signature of Charles H. Stanton and of the execution of the said assignment by
144 the subscribing witnesses thereto is waived by defendant's counsel.

Counsel for complainant next offers in evidence an assignment from W. K. Jenne to The Typewriter Company, dated May 13, 1878, and the same is filed in evidence and marked "Complainant's Exhibit Jenne Assignment."

Proof of execution of the assignment by the parties thereto is waived by defendant's counsel.

Counsel for complainant next offers in evidence an assignment from C. Latham Sholes to The Typewriter Company of certain applications

for Letters Patent, said assignment being made in 1878, and the same is filed in evidence and marked "Complainant's Exhibit Shiles Assignment to The Typewriter Company of 1878."

Proof of execution of the said assignment is waived by defendant's counsel.

Counsel for complainant next offers in evidence original assignment from Shiles to The Typewriter Company, dated August 15, 1878, and the same is filed in evidence and marked "Complainant's Exhibit Shiles Assignment of August 15, 1878."

Proof of execution of the said assignment is waived by defendant's counsel.

Counsel for complainant next offers in evidence assignment from Phelps & Gilman to The Typewriter Company, dated January 30, 1878, and the same is filed and marked in evidence "Complainant's Exhibit Gilman Assignment of January 30, 1878."

Proof of execution of the said assignment is waived by defendant's counsel.

Counsel for complainant next offers in evidence an agreement between C. Latham Shiles and The Typewriter Company, dated August 15, 1878, and the same is filed in evidence and marked "Complainant's Exhibit Shiles Agreement as to Royalty of August 15, 1878."

Proof of execution of the said agreement by the parties thereto is waived by defendant's counsel.

[illegible]

[illegible]

[illegible]

Counsel for complainant offers in evidence certain letters from The Typewriter Company and James Densmore, Trustee, and E. Remington & Sons and in addition thereto dated June 12,

148 1881, and the same is filed in evidence and marked "Complainant's Exhibit Typewriter License, June 13, 1881."

Proof of execution of the said contract is waived by defendant's counsel.

Counsel for complainant offers in evidence original assignment from L. S. Crandall to G. W. N. Yost, dated January 3, 1876, and assigned by Yost to The Typewriter Company, April 25, 1885, and the same is filed in evidence and marked "Complainant's Exhibit Assignment of Half Interest in Crandall Patent."

Proof of execution of the said assignment is waived by defendant's counsel.

149 Counsel for complainant next offers in evidence a certified copy of Brooks patent No. 202,923, and the same is filed in evidence and marked "Complainant's Exhibit Brooks Patent."

Counsel for complainant next offers in evidence a contract and assignment of interest in the invention described and claimed in Brooks patent No. 202,923, and the same is filed in evidence and marked "Complainant's Exhibit Brooks-Yost Assignment-Agreement April 18, 1878."

Proof of execution of the said assignment-agreement is waived by defendant's counsel.

150 Counsel for complainant, in connection with this agreement-assignment, offers a circular on which is a letter purporting to have been written to Mr. Brooks by Mr. Yost, May 15, 1875, and the same is filed in evidence and marked "Complainant's Exhibit Yost Letter May 15, 1875."

Counsel for complainant next offers in evidence a certified copy of the assignment of Letters Patent No. 202,923, dated April 30, 1878, said assignment bearing date the 17th day of January, 1880, and the same is filed in evidence and marked "Complainant's Exhibit Certified Copy of Assignment of Brooks Patent."

It is admitted that Samuel Remington died 151
in New York City on or about the 1st of December, 1882.

Counsel for complainant offers in evidence exemplified copy of the record of letters of administration of the goods, chattels and credits of Samuel Remington, deceased, and the same is filed in evidence and marked "Complainant's Exhibit Exemplification of the Record of the Letters of Administration, etc., of Samuel Remington, deceased."

Counsel for complainant offers in evidence a certified copy of an assignment of Brooks patent No. 202,923 from Carver Remington and David Lewis, administrators, &c., of Samuel Remington, deceased, to E. Remington & Sons, said assignment being dated the 20th day of April, 1885, and the same is filed in evidence and marked "Complainant's Exhibit Assignment of Brooks Patent from Samuel Remington's Administrators to E. Remington & Sons." 152

Counsel for defendant, while waiving proof of execution of the various above mentioned documents, objects to the introduction of the same in evidence for the reason that they are immaterial and irrelevant, and tend to unnecessarily burden the record.

18 Q. Do you know why the Brooks patent was 153
conveyed to Samuel Remington by Brooks, and not to E. Remington & Sons at the time of the assignment to Samuel Remington? If so, please state what you know on that subject? A. I do know. I negotiated the purchase of the Brooks patent for E. Remington & Sons with Brooks, and I think I drew the assignment. E. Remington & Sons paid the consideration at the time for the assignment, but there was some friction at that time between Densmore and Yost and E. Remington & Sons, and it was thought advisable, and I so advised it, that the legal title should be for the time being vested in

154 Samuel Remington, and it was so vested, and it was a mere matter of neglect, or inadvertence, that it was not shortly afterwards and during the lifetime of Samuel Remington conveyed by him to E. Remington & Sons.

19 Q. Prior to 1882, state, if you know, through what agency or by what means E. Remington & Sons sold their typewriting machines? A. A variety of agencies, sometimes Mr. Yost acted as agent for them, and he associated with himself at one time some other parties who purchased from E. Remington & Sons and sold some machines, but later on, and I should think about the year 1878 or '79, somewhere about that time, E. Remington & Sons estab-
155 lished a department in their office and store in New York City, and they placed Clarence W. Seamans at the head of it as manager, and he held that position until some time, I think, in 1882, when, as will perhaps more lately appear, he and Mr. Wyckoff and Mr. Benedict formed a copartnership under the name of Wyckoff, Seamans & Benedict, and established an office and warehouse of their own in the City of New York and elsewhere, and entered into an arrangement with E. Remington & Sons for the sale and exclusive right to purchase and sell the whole of the typewriter product of E. Remington & Sons. Perhaps I ought to add that in addition to the store and office of E. Remington & Sons in the City of New
156 York, they had a store and office in London through which they made sales of their typewriter product prior to 1882.

20 Q. Prior to 1882, where, besides in New York and London, were the typewriting machines manufactured by E. Remington & Sons sold in this country, if you know? A. I think they had agencies in Washington, D. C., in Chicago, Boston, Atlanta, Ga., and in several other cities I don't particularly call to mind.

21 Q. When, if at all, did the firm of Wyckoff, Seamans & Benedict obtain the agency for the sale

of typewriting machines manufactured by E. Rem- 157
ington & Sons? A. In 1882.

Counsel for complainant produces the original agreement between Wyckoff, Seamans & Benedict and E. Remington & Sons, dated July 29, 1882, and the same is offered in evidence, proof of execution being waved, and the same is filed in evidence and marked "Complainant's Exhibit Original Contract between Wyckoff, Seamans & Benedict and E. Remington & Sons."

On said contract is also an extension thereof until the 1st day of August, 1884, signed and executed by the same parties.

22 Q. Do you know whether the contract between Wyckoff, Seamans & Benedict and E Remington & 158
Sons, relating to the exclusive agency for the sale of typewriting machines was further extended, that is to say, after August, 1884? State what you know on that subject? A. It was further extended and was in force in March, 1886, when Wyckoff, Seamans & Benedict purchased from E. Remington & Sons the typewriter branch of their business.

23 Q. Do you know to what extent E. Remington & Sons manufactured and sold through their agencies typewriting machines prior to March, 1886, and if so, state what you know in that regard? A. The business had a gradual growth, slow at first and accelerated more lately. For some time previous to March, 1886, say one or two years, perhaps longer, 159
they manufactured and sold about twenty per day. The demand was in excess of their production so that they had to send by express almost every machine which they manufactured, and I several times remonstrated with them and urged the increase of their production, and they always expressed an intention of increasing it, but for some reason it did not exceed the figure that I have mentioned.

24 Q. Prior to 1886, when E. Remington & Sons ceased to manufacture and sell through their agents, typewriting machines, state if you know, where

160 those machines sold, whether both in this country and in Europe? A. They were sold both in this country and in Europe.

25 Q. Prior to March, 1886, how many different models or styles of machine did E. Remington & Sons manufacture and sell and how were these different models or styles of machine designated? A. I am not very clear upon that subject. I think that Mr. Jenne will be able to give you better information than I can. I know that a No. 1 and a No. 2 were manufactured, and I think a No. 3 and No. 4 prior to that time; I am not sure about the two latter numbers.

26 Q. I show you now a typewriting machine and
161 ask you to examine the same and say whether or not you have ever seen machines having a structure and mode of operation like that exhibited in said machine, and if so, when and where? A. I recognize it as one of the earliest No. 1 typewriters that were manufactured by E. Remington & Son having only what was known as the upper case or capital letters. The platen or cylinder upon which the printing is done was caused to move transversely to the operator from left to right, and conversely, by means of a pulley and cord, which cord could be attached to a treadle or operated by hand. It varies in some quite material respects from the original machine which was brought to E. Remington & Sons in Feb-
162 ruary, 1873, and is unquestionably one of the earlier machines made by E. Remington & Sons as a reorganization of and improvement over the original February, 1873, machine.

27 Q. Do you know for how long a period E. Remington & Sons made typewriting machines similar to the one you have just examined, and to which you referred in your last answer? A. They made them until after they produced their No. 2 machine which I have already referred to, and the manufacture of the No. 1 gradually grew less and ceased from that time.

The machine shown the witness and identified and referred to by him in his last two preceding answers is offered in evidence and marked "Complainant's Exhibit The Typewriter, Manufacturer's No. 1640." 163

28 Q. I notice on this exhibit machine the name "Sholes & Glidden." If you know, please state for how long a period typewriting machines manufactured by E. Remington & Sons like said model bore that name? A. It is a matter which I cannot definitely answer. I can only say on that subject that it was known by that name colloquially for a very short time. How long the name was stamped upon the machine I can only tell approximately, and I should think I would be perfectly safe in saying that the name Sholes & Glidden was never stamped on any machines after the production of the No. 2 machine, and never was stamped on a No. 2 machine, and that it had ceased colloquially to be known by the name Sholes & Glidden even before that. 164

29 Q. You have already said that Samuel Remington was abroad from a period prior to 1873 up to 1877, when he returned to this country. Did he remain in this country after he returned in 1877, up to the time of his death in 1882? A. He did.

30 Q. After his return in 1877, until he died in 1882, where did his family reside, if you know? A. His family, with the exception of Carver Remington, was either in Europe or Egypt at the time that he returned in 1877. Mrs. Remington, with her daughter and two youngest sons, Eliphalet and Frank, returned to this country, I think, in 1878, and almost immediately Mrs. Remington purchased a residence in New York City, and after that Mr. Samuel Remington's home was there. He spent, however, the greater portion of his time from and after his return in November, 1877, in New York City and boarded at the Hoffman House. E. Remington & Sons had an office and warehouse in New 165

166 York City, and of that he took the principal charge and management, making occasional visits to Ilion, and he retained the charge and management of the New York office until the time of his death.

31 Q. After Samuel Remington's return from Europe in 1877, and from that time on until his death, what personal interest did he manifest or take in that part of the business relating to the manufacture and sale of typewriting machines, and what was his attitude towards the typewriter? State, if you know? A. His attitude towards it was unfriendly. He was opposed to it, and remarked several times in my hearing that E. Remington & Sons never ought to have taken hold of it, that their
167 legitimate business was the manufacture of arms, and that they had never made any money outside of that branch. He had frequent conversations with Mr. James Densmore on the subject of getting rid of it, and threatened to, as he expressed it, "kick it out." Some of those conversations were in my presence, and he expressed himself to me personally to the same effect and purport, and he offered at one time to sell out to Mr. Densmore what he termed or was termed the whole typewriter interest for one hundred thousand dollars, including an indebtedness of Yost and The Typewriter Company of about sixty thousand dollars. His known attitude on this subject excited distrust on the part of Densmore and
168 Yost, and it was chiefly, if not wholly, in consequence of it and the apprehension which they entertained, that E. Remington & Sons would cease the manufacture of the machines or dispose of it in some manner, that Mr. Yost constructed and organized what was known and is known as the Caligraph or Caligraph Writing Machine, which was about 1879 or '80

Counsel for defendant objects to the foregoing question and its answer as immaterial and irrelevant and the final part of the answer is further objected to as irresponsive.

32 Q. To your knowledge did Samuel Remington 169
ever have anything to do in a practical way with regard to the manufacture of typewriting machines in and about the works of E. Remington & Sons?

Same objection as to the preceding question.

A. I do not think that he ever did. If by "practical way" you mean the suggesting of improvements either in the machine or in the process of the manufacture of it, he was very little at Ilion after his return from Europe in 1877, and when there was almost exclusively engaged in matters of finance and in correspondence with parties abroad with reference to the procuring of orders for the manufacture of military arms. That was his particular branch 170
of the business.

33 Q. Which of the Remington brothers, if either, looked after the part of the business relating to the manufacture of typewriters or typewriting machines?

Same objection.

A. The oldest brother, Philo Remington, who always resided at Ilion, near the works, and was always recognized as the head of the manufacturing department, not only with reference to typewriters, but with reference to all the products of E. Remington & Sons.

34 Q. Did you ever know the son of Samuel Rem- 171
ington, whose name was Franklin? If so, where and when? A. My first acquaintance with him was formed in London, England, in the winter of 1874 and '75. He was then a lad of about nine years of age and he and his older brother, Eliphalet, were spending the Christmas holidays with their father and mother at the same hotel where I was stopping. They remained abroad, that is, the two sons that I have mentioned, and Mrs. Remington and her daughter, until, I think, 1878. They did not return with Mr. Samuel Remington when he came home in 1877.

172 35 Q. After the return of his mother in 1878 did she or did he reside with her in Ilion or where did they live, if you know? A. They did not reside in Ilion; as I have stated, Mrs. Remington purchased a residence in New York City and her family, with the exception of Carver, resided with her there. Frank, as we generally called him for short, after I suppose some preliminary preparation, entered Harvard College, from which he graduated in 1887, and from there he went to Cazanovia, in this State, I think, and spent some time on a farm which his father owned at the time of his death, and from there he went to Chicago. He never resided or made his home in Ilion after he went to join his
173 father and mother in Europe in 1869; in fact, I don't think he resided there before that. I think their home was in Utica.

36 Q. Did Franklin Remington ever have anything to do with the typewriter business carried on by E. Remington & Sons from 1873 to 1886, to your knowledge? A. He did not.

37 Q. Do you know a son of Samuel Remington by the name of Carver Remington, and if so, for how long a period have you been acquainted with him? A. I knew him somewhat prior to 1868. He had been in his younger days brought up in Ilion, where his father had resided. His father, however, and the family moved to Utica some time, I should
174 think about 1864 or '65, somewhere along there, and where they resided up to the time of Mr. Samuel Remington's first going to Europe, which was late in 1866 or early in 1867. Mrs. Samuel Remington—Carver who was the oldest child—and a daughter next to him in age, accompanied me to Europe in October, 1868. Carver was then, I should say, about eighteen; I don't profess to be quite accurate about that. Mr. Samuel Remington was at that time in Europe and Carver remained there, I am quite clear, without any interruption until early in 1875; that is, abroad; he was part of the time in Venezuela, South America, where his father had a gold mine, or had an

interest in it. In 1875, in January or February, 175
Carver returned to this country. He had given to him by his uncle, Benjamin F. Carver, a situation on the Hannibal and St. Joe Railroad somewhere west of St. Joe. He remained there about a year, when he returned to Ilion. He did not engage in any kind of business there, although his uncle, at his father's request, endeavored to interest him in the office of the works of E. Remington & Sons. He married there, I should say somewhere in the latter part of 1876 or early in 1877, without professing to be exact in that respect, and when his father returned in 1877 Carver was keeping house in Ilion. He had then no business. I am not sure but that for a few months before his father returned Mr. 176
Philo Remington did induce him to take a sort of nominal position in the office, but whether this was before or after his father's return I am not quite sure. At any rate, after his father's return he was induced to pay some attention, although quite spasmodic, to business, which consisted in the keeping of some account book in the office, and I think that he had one share of stock given to him by his father so as to qualify him as one of the directors of the corporation, and he was also, I think, appointed secretary to the corporation. This was done, however, with a view of interesting him. His duties were more nominal than real. There were no regular meetings of the Board of Trustees, and the records that were kept 177
were very few and very slight, and I doubt very much whether Carver even kept those. He did not take any part in the mechanical department of the works at all, and in fact his connection with the works was of a very slight character. He did not evince any disposition to tie down to business. After his father's death, and in the early part of 1883, he entered into a copartnership with two other gentlemen and took a contract to grade a portion of the New York, West Shore & Buffalo Railroad. After that was finished, and I think it was in the fall of 1883, he went to New Orleans and opened a roller

178 skating rink. From there he went and engaged in business in Minneapolis, some mercantile business, and from there I think he went to Chicago. I do not think he has had any residence in Ilion, since the fall of 1883 or fore part of 1884.

Adjourned to Wednesday, February 22d, 1899, at 10.30 A. M., at the same place.

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NEW YORK, February 22, 1899.
10.30 A. M.

179 Met pursuant to adjournment.

Present—Counsel as before.

DIRECT-EXAMINATION of THOMAS RICHARDSON continued:

38 Q. You have stated that Samuel Remington died in December, 1882. Do you know what became of his interests as stockholder and otherwise in E. Remington & Sons corporation, and if so, state what became of those interests? A. In September, 1883, the administrators of his estate transferred to Philo Remington all his interests in the corporation E. Remington & Sons, including, of course, and con-
180 sisting mainly, if not entirely, of the shares which he owned in the capital stock of that corporation.

39 Q. After the death of the father was Carver Remington in any way connected with the business of E. Remington & Sons, and if so how long did such connection last? A. As one of the next of kin of his father, and as one of the administrators of his estate, he had an interest in the capital stock of that corporation until September, 1883, but, as I have already stated in my deposition, early in 1883, in company with other gentlemen, he entered into a contract to grade a length of the New York, West Shore and Buffalo Railroad Company, and he paid

little or no attention to the affairs of the corporation 181
E. Remington & Sons and he took no part whatever in the management of it.

40 Q. If you know, will you please state how old Franklin Remington was at the time of his father's decease? A. He was a minor of something less than eighteen years of age. I should say about seventeen.

41 Q. Between the years 1873, when E. Remington & Sons corporation took up and afterwards carried on the manufacture and sale of typewriting machines, and down to 1886, when said corporation ceased to manufacture and sell such machines, do you know whether either of the Remington brothers, Philo Remington, Samuel Remington or Eliphalet 182
Remington, or jointly or as copartners, were engaged in the manufacture and sale of typewriting machines? A. They were not, either jointly or severally. The only connection that any of them had in the manufacture or sale of typewriting machines was as stockholders in the corporation E. Remington & Sons.

42 Q. At the time E. Remington & Sons took up the manufacture of typewriting machines in 1873, was there then any other machine on the market, or being manufactured or sold, to your knowledge, and if there were no other typewriting machine then being manufactured and sold, how soon thereafter did it come to your knowledge that there was another 183
or other typewriting machine or machines on the market? A. In 1873, from the very inception of the connection of E. Remington & Sons with the manufacture of a typewriting machine, it was my duty and business to take the oversight of the patents and inventions connected with or entering into the construction of typewriters, and to make myself thoroughly informed, as I did, with the state of the art in that regard, and I had copies of all the United States Letters Patent that had been issued applicable to the manufacture of typewriting machines, as well as some foreign patents also applicable thereto, and

194 I am able to state, very positively, that up to that time and for years afterwards, as I will presently state, there had never been a typewriting machine manufactured commercially, or put upon the market up to 1878, and not until some time about the latter part of 1880, or the early part of 1881, except the machine which was manufactured by E. Remington & Sons. There was being gotten up at one time during the interval which I have mentioned, what has subsequently been and is now known as the Hammond typewriter, which is known in the art as a wheel machine, as contradistinguished from the Remington machine which is known as a type bar machine. Mr. Hammond, the

195 inventor of the machine which bears his name, for some two or three years made use of the facilities which E. Remington & Sons possessed at their works for constructing his machine, but he did not finish and perfect it there. He afterwards went to Florence, Mass., and finished the construction of his first model or models there, but that machine was not put upon the market until some time after 1881, if my recollection serves me. The first machine, after the Remington, that was constructed commercially and put upon the market was what was then and is now known as the Caligraph, or Caligraph typewriter, which was gotten up by George W. S. Fox, and for the manufacture of

196 which he procured a limited license from Sons Questions or tractors, and "The Typewriter Company" in 1880. To the best of my recollection the machine was not put upon the market until the fall of 1880, and I think not before the spring of 1881. It was certainly not manufactured in any quantity until after the date last named. Caligraph was like the Caligraph belonged to the same class as the Remington as a type bar machine, but I had several very material differences in its construction, and mode of operation from those of the Remington.

[illegible] In your answer to direct question [illegible] have, among other things, mentioned the [illegible]

190 in 1882, and if you have any knowledge on that subject, please state what you know? A. He resided at Ithaca in this State prior to the year 1882. He was a court stenographer and an agent for the sale of the Remington typewriters until he joined the copartnership firm Wyckoff, Seamans & Benedict in 1882.

47 Q. Do you know how the typewriting machines manufactured by E. Remington & Sons and sold through their various agencies, between the years 1873 and 1886, were known and designated in the market and among purchasers and users of typewriting machines? If you have any knowledge on that subject, state briefly what you know? A.
191 For the first few years, and perhaps until the production of the No. 2 Machine in 1877, the machine was technically known as the Sholes & Glidden, although in the general speech of people at Ilion and elsewhere, so far as I had opportunity of knowing about it, it was even then more generally spoken as the Remington typewriter, and in fact I think that very few people knew of any other designation or appellation for that machine. Of course, up to the time of the production of the Caligraph machine, of which I have spoken, there being only one typewriting machine known to commerce, it was not necessary and perhaps not customary to des ignate this typewriting machine by any par-
192 ticular name, and it was frequently spoken of as "The typewriter," or "The typewriting machine." In or about 1877, when the No. 2 machine was constructed, having been materially reorganized and changed in order to adapt it to the production of the large and small letters, the machine became more distinctively the Remington typewriter as being manufactured by E. Remington & Sons, and having been so thoroughly reorganized at their works as to have become in a larger sense the product of their skill and invention and that of their skilled workmen, and from that time undoubtedly the word Remington became more generally and more

naturally associated with it as a distinguishing name, 193
but it still remained true until the latter part of 1880 or the early part of 1881, when the Caligraph was put upon the market, that the Remington, as I have designated it for short, being the only typewriting machine known to commerce, there was no necessity for any special designation of it by any other name than *the* typewriter or *the* typewriting machine, although my recollection is that it was colloquially termed, even prior to 1881, the Remington machine, or the Remington typewriter, or the Remington typewriting machine; in other words, the name Remington was associated with it, but when the Caligraph began to be placed upon the market it became advisable and it was thought best by the corporation, 194
E. Remington & Sons, to designate the machine in their advertisements as the Remington in some form; that is to say, connecting the word Remington with it. It was at first, shortly after the time I have mentioned, in their advertisements termed, "The Perfected Typewriter," or typewriting machine, and, as early as August, 1881, it was advertised as "The Remington Perfected Typewriter," and after that time it was advertised as "The Remington Perfected Typewriter," and later on as the "Remington Standard Typewriter," and always in some form in which the word "Remington" was connected with it as a distinguishing characteristic of the machine.

48 Q. I call your attention to *Scribner's Monthly* 195
*Illustrated Magazine* of August, 1881, at page 10 of the advertisements in the back part of said magazine, and also *Harper's New Monthly Magazine* for January, 1882, at page 34 of the advertisements in the back part of said magazine, and ask you to examine said pages, of said magazines, and state whether you find any advertisements relating to the "Remington" typewriter therein, and how said machine is designated in said advertisements? A. I have examined the said two magazines and I find on the pages mentioned in the question an advertisement of the said typewriting machine, in

196 which there is a cut given of what appears to be the No. 2 machine, the upper and lower case machine, and it is in both of said advertisements designated "The Remington Perfected Type-Writer."

49 Q. Did you obtain these magazines, and if so, where did you obtain them? A. I obtained them from the Ilion Public Library, situate in Ilion, where the works of E. Remington & Sons were, and where the present works where the typewriter is manufactured, are located.

Counsel for complainant offers in evidence the advertisements referred to by the witness in his last answer, being advertisement on page 10 of advertisements of the August *Scribner*, and the
197 advertisement on page 34 of advertisements of *Harper's Monthly Magazine* of January, 1882, and the same are marked "Complainant's Exhibits Remington Advertisements in *Scribner's Magazine* for August, 1881, and *Harper's Magazine* for January, 1882."

50 Q. Do you know whether the typewriter business of E. Remington & Sons corporation was disposed of in 1886, that is to say, sold, and if so, to whom? A. In March, 1886, as the representative of E. Remington & Sons, I negotiated with Wyckoff, Seamans & Benedict, at that time and for some years theretofore a copartnership, the sale of the type-
198 writer branch of the business of E. Remington & Sons, including all the franchises connected with it, licenses, patents and patented inventions, all machines in process of construction and not actually finished, all the material, raw and in process, which had been provided for the manufacture of typewriting machines then on hand, and machines and tools which had been theretofore employed by E. Remington & Sons in that branch of their business, together with a lease for three years of certain portions of the manufacturing establishment of E. Remington & Sons sufficient and intended to be occupied, and which were afterwards and from that time oc-

cupied by Wyckoff, Seamans & Benedict and their 199
successors, a corporation, The Standard Typewriter Manufacturing Company, in and for the manufacture of the Remington typewriter. It was understood and expressed at the time of the negotiation and the conclusion of the transaction that the copartnership Wyckoff, Seamans & Benedict intended to purchase, and did purchase, the said interests and property, with the view of immediately organizing a corporation for the purpose of stepping into the shoes of Wyckoff, Seamans & Benedict in that regard, and taking to itself the said property and interests on precisely the same terms as those under which they were taken by the said copartnership and as of the very date when the 200
transaction was consummated between E. Remington & Sons and the copartnership Wyckoff, Seamans & Benedict. The said corporation was as soon as could be, and within, I think, a couple of weeks or thereabouts, organized under the name "Standard Typewriter Manufacturing Company," and, immediately on its organization being perfected, all the said property and interests were conveyed by Wyckoff, Seamans & Benedict to said corporation as of the day of the consummation of the said transaction between Wyckoff, Seamans & Benedict and E. Remington & Sons.

51 Q. I show you four paper writings and ask you to state, what they are, briefly? A. One of the said 201
documents filed on the back thereof "Agreement E. Remington & Sons with William O. Wyckoff, *et al.*, dated March 22d, 1886," is the transfer, of which I have spoken, by E. Remington & Sons to Wyckoff, Seamans & Benedict of all the said property and interests mentioned in my last answer. The second document, filed on the back "Assignment E. Remington & Sons to William O. Wyckoff *et al.* dated March 22, 1886," is an assignment of a certain agreement of license bearing date June 13, 1881, executed by the typewriter company and by James Densmore, as

202 trustee, to E. Remington & Sons. The third document, filed on the back "Assignment, E. Remington & Sons to William O. Wykoff *et al.*, dated March 22nd, 1886," is an assignment of the Brooks patent which has heretofore been spoken of as being essential to the manufacture of the No. 2 machine. The fourth document handed to me, and filed on the back thereof "Lease E. Remington & Sons to William O. Wykoff *et al.*, dated March 22nd, 1886," is the lease of part of the works of E. Remington & Sons at Ilion, to which I referred in my answer to the last question.

52 Q. Are the four papers shown you, and to which you have referred in your last answer, all original
203 documents, made and executed by the respective parties at the time they bear date?

A. They are the original documents executed by the parties and at the time at which they bear date.

Counsel for complainant offers in evidence the several papers referred to, to wit, agreement between E. Remington & Sons with William O. Wyckoff *et al.*, dated March 22, 1886, and the same is filed in evidence and marked "Complainant's Exhibit E. Remington & Sons' Contract, March 22, 1886."

Complainant's counsel offers in evidence a lease from E. Remington & Sons to William O. Wyckoff *et al.* of the premises in which the type-
204 writing business had theretofore been carried on, and the same is marked "Complainant's Exhibit E. Remington & Sons' Lease March 22, 1886."

Complainant's counsel offers in evidence an assignment of E. Remington & Sons to William O. Wyckoff *et al.* of the licenses under which the typewriting machines had theretofore been manufactured and sold, and the same is filed in evidence and marked "Complainant's Exhibit E. Remington & Sons' Assignment to William O. Wyckoff *et al.*, March 22, 1886."

Complainant's Counsel next offers in evidence 205
an assignment from E. Remington & Sons to William O. Wyckoff *et al.*, of the Brooks patent No. 202,923, and the same is filed in evidence and marked "Complainant's Exhibit E. Remington & Sons Assignment to William O. Wyckoff *et al.* of the Brooks Patent, March 22, 1886."

Complainant's counsel offers in evidence an exemplified copy of the certificate of incorporation of The Standard Typewriter Manufacturing Company which is dated April 8, 1886, and was filed with the Secretary of State April 16, 1886, and the same is filed in evidence and marked "Complainant's Exhibit Certificate of 206
Incorporation of The Standard Typewriter Manufacturing Company."

53 Q. Please examine the paper writing which I now show you and state what it is, and whether you prepared it and superintended the execution of the same by the parties thereto? A. The document handed to me for examination was prepared by me as counsel for Wyckoff, Seamans & Benedict to The Standard Typewriter Manufacturing Company and consists, in the first place, of the original agreement of transfer by Wyckoff, Seamans & Benedict to The Standard Typewriter Manufacturing Company of the interests and property which Wyckoff, Seamans 207
& Benedict had acquired from E. Remington & Sons on the 22d day of March, 1886, the said document bearing date April 16, 1886, and acknowledged before me as notary public on the day last mentioned. Attached to the said original document, and as forming part of it and referred to in the said original, is a copy of the agreement between E. Remington & Sons and Wyckoff, Seamans & Benedict dated March 22, 1886, which has been already referred to and put in evidence. The document is filed on the back thereof "Agreement William O.

208 Wyckoff and others with The Standard Typewriter Manufacturing Company, dated April 16, 1886."

Complainant's counsel offers in evidence the contract between William O. Wyckoff and others and The Standard Typewriter Manufacturing Company dated April 16, 1886, and the same is filed in evidence and marked "Complainant's Exhibit William O. Wyckoff and others Contract with The Standard Typewriter Manufacturing Company, April 16, 1886."

Q. 54. I now show you four other papers and ask you to state what they are, and whether or not you prepared said documents and supervised the execu-
209 tion of them? A. The first document is endorsed "Assignment of Lease William O. Wyckoff *et al.*, to Standard Typewriter Manufacturing Company, dated April 16, 1886," and was prepared by me; it was executed by W. O. Wyckoff, C. W. Seamans, H. H. Benedict, Standard Typewriter Manufacturing Company, by W. O. Wyckoff, President, under their hands and seals, acknowledged before me on the 16th day of April, 1886, as notary public, and is an assignment of the lease by Wyckoff, Seamans & Benedict to the Standard Typewriter Manufacturing Company of the premises leased by E. Remington & Sons to Wyckoff, Seamans & Benedict under date of March 22d, 1886, to which I have referred in my
210 previous testimony. The second document filed "Assignment William O. Wyckoff *et al.* to Standard Typewriter Manufacturing Company, dated April 16, 1886," is an assignment by Wyckoff, Seamans & Benedict to the Standard Typewriter Manufacturing Company of the agreement of license dated June 13, 1881, by the typewriter company and James Densmore as trustee to E. Remington & Sons and already in evidence, and also of the addendum agreement of license bearing date June 13, 1881, also in evidence. I recognize the signatures to the document in question and they are in the proper handwriting of W. O. Wyckoff, C. W. Seamans and H. H. Benedict

respectively. The third document handed to me 211
and filed "Assignment William O. Wyckoff *et al.* to Standard Typewriter Manufacturing Company, dated April 16, 1886," is an assignment by Wyckoff, Seamans & Benedict to the Standard Typewriter Manufacturing Company of the Brooks patent hereinbefore referred to. I recognize the signatures to the said document, and they are in the proper handwriting of W. O. Wyckoff, C. W. Seamans and H. H. Benedict respectively. The fourth document handed to me is an assignment from Wyckoff, Seamans & Benedict to the Standard Typewriter Manufacturing Company of two certain agreements or assignments made by George W. N. Yost, both bearing date October 28, 1878, and recorded as therein 212
stated. I recognize the signatures to the document; they are in the proper handwriting of W. O. Wyckoff, C. W. Seamans and H. H. Benedict respectively. These four documents are all original documents and were executed on the day on which they bear date, April 16, 1886.

Complainant's counsel offers in evidence assignment of license of William O. Wyckoff *et al.* to the Standard Typewriter Manufacturing Company, dated April 16, 1886, and the same is filed in evidence and marked "Complainant's Exhibit Assignment of License William O. Wyckoff *et al.* to Standard Typewriter Manufacturing Campany, April 16, 1886." 213

Complainant's counsel offers in evidence assignment of lease of William O. Wyckoff *et al.* to Standard Typewriter Manufacturing Company dated April 16, 1886, and the same is filed in evidence and marked "Complainant's Exhibit Assignment of Lease William O. Wyckoff *et al.* to Standard Typewriter Manufacturing Company, April 16, 1886."

Complainant's counsel offers in evidence assignment of Brooks patent from William O. Wyckoff *et al.* to Standard Typewriter Manu-

214 facturing Company, dated April 16, 1886, and the same is filed in evidence and marked "Complainant's Exhibit Assignment Brooks Patent, William O. Wyckoff *et al.* to Standard Typewriter Manufacturing Company, April 16, 1886."

Complainant's counsel offers in evidence an assignment of two certain agreements with George W. N. Yost, dated October 28, 1878, from William O. Wyckoff *et al.* to Standard Typewriter Manufacturing Company, dated April 16, 1886, and the same is filed in evidence and marked "Complainant's Exhibit Assignment Yost Agreements William O. Wyckoff *et*
215 *al.* to Standard Typewriter Manufacturing Company, April 16, 1886."

55 Q. After the purchase by Wyckoff, Seamans & Benedict of the typewriter interests of E. Remington & Sons, if you know, please state whether they continued to carry on the business of manufacturing and selling typewriting machines, and whether the corporation subsequently organized under the name of the Standard Typewriter Manufacturing Company continued the manufacture of typewriting machines, and through what agency they were sold and, generally, what you know about the conduct of the business theretofore carried on by E. Remington & Sons after it was purchased and acquired by Wyckoff,
216 Seamans & Benedict and the Standard Typewriter Manufacturing Company? A. The manufacture of the same typewriting machine went on first, by Wyckoff, Seamans & Benedict for the few days they held the legal title and, subsequently, by Standard Typewriter Manufacturing Company without any break, they employing the same hands that had been employed by E. Remington & Sons in that branch of manufacture and the same superintendent, who is still with them, and, substantially, in every respect, I think, in the same manner as theretofore by E. Remington & Sons. There was a greater impulse

given to the business, and the manufacture of 217
the machine rapidly increased in amount until, I think, that within two years, or less, from the time of the devolution of the interests by E. Remington & Sons, as stated, there were being manufactured of this machine by the successors of E. Remington & Sons, as already stated, from forty to sixty machines per day. In 1888, in consequence of the increasing number of typewriting machines, which were being gotten up and placed upon the market in competition with the Remington machine, it was deemed advisable by the Standard Typewriter Manufacturing Company to connect more closely still the name, Remington, with the machine and with its manufacture, and I made an 218
application in September, I think it was, 1888, to the Supreme Court of this State, for leave to change the name of the corporation from Standard Typewriter Manufacturing Company to "Remington Standard Typewriter Manufacturing Company," and an order was granted by said Court that from and after the 1st day of January, 1889, the name should be so changed, and the corporation was thereafter known and designated by its new corporate name, Remington Standard Typewriter Manufacturing Company. At or about the expiration of the three years' lease of a part of the works of E. Remington & Sons, heretofore mentioned and put in evidence, the Remington Standard Typewriter Manu- 219
facturing Company first leased and then bought a large manufacturing plant some one-eighth of a mile or thereabouts from the works of E. Remington & Sons, known as the Remington Agricultural Works, located in Ilion, and which had theretofore been used by Remingtons as a manufactory of agricultural implements. The machinery and appliances were moved over to the last named place, and, without any break worth mentioning, the machine continued to be manufactured in the new works mentioned, and is there manufactured to-day and has been ever since.

220 The product has gradually grown so that I think they are now manufacturing something over one hundred typewriting machines per day. The machine, after the acquisition of the interest, as already stated, by Wyckoff, Seamans & Benedict, and shortly afterwards by the Remington Standard Typewriter Manufacturing Company, continued to be sold by the copartnership Wyckoff, Seamans & Benedict under the same contract, or an extension thereof, made between Wyckoff, Seamans & Benedict and E. Remington & Sons, and which has already been put in evidence, the manufacturing and selling departments being kept separate and distinct for several years.

221 Complainant's counsel offers in evidence an exemplified copy of an order changing the name of Standard Typewriter Manufacturing Company to Remington Standard Typewriter Manufacturing Company, filed and recorded in the office of the Secretary of State the 1st day of December, 1888, and the same is filed in evidence and marked "Complainant's Exhibit Order Changing Name of Standard Typewriter Manufacturing Company to Remington Standard Typewriter Manufacturing Company."

Complainant's counsel offers in evidence an exemplified copy of an order supplementary and confirmatory in the matter of the change of said
222 name which was granted on the 29th day of December, 1888, and filed and entered in the Clerk's office of Herkimer County on the 31st day of December, 1888, and the same is filed in evidence and marked "Complainant's Exhibit Supplementary and Confirmatory Order Changing Name of Corporation Standard Typewriter Manufacturing Company to Remington Standard Typewriter Manufacturing Company."

Complainant's counsel also offers in evidence the extension of the contract between E. Remington & Sons and Wyckoff, Seamans & Bene-

dict, dated October 6, 1883, extending said contract for the sale of typewriters until August 1, 1886, and the same is filed in evidence and marked "Complainant's Exhibit Extension Contract, October 6, 1883." 223

56 Q. After Wyckoff, Seamans & Benedict and the Standard Typewriter Manufacturing Company, later known as the Remington Standard Typewriter Manufacturing Company, acquired the typewriter business of E. Remington & Sons, how, if at all, and if you know, were the typewriting machines manufactured by said corporation and sold by Wyckoff, Seamans & Benedict, designated and known to the public and among users of typewriting machines? A. They were generally advertised as Remington Standard Typewriters or Standard Remington, but they were known to the people at large, the users, and generally, if not universally, designated as the Remington, or the Remington typewriter, or the Remington typewriting machine; in other words, generally speaking, the word "Standard" was only used in connection with the word "Remington" when it was desired to be specific and as used in the letterheads, perhaps, of the concern and in the advertising, the shorter name, the Remington, being used almost universally by the people at large and the public, and the agents and employees of the manufacturing concern, to designate the machine. 224

57 Q. After Wyckoff, Seamans & Benedict and the Standard Typewriter Manufacturing Company, later known as the Remington Standard Typewriter Manufacturing Company, acquired the typewriter business of E. Remington & Sons, was the business extended both in this country and in Europe, and if so, to what extent? I mean the sale of typewriters manufactured by said corporation Standard Typewriter Manufacturing Company, later known as Remington Standard Typewriter Manufacturing Company? A. As I have already stated, there was a considerably 225

232 Benedict as selling agents, dated September 9, 1885, and ask you to examine the same and see if the signatures attached to said contract are those of E. Remington & Sons and Wyckoff, Seamans & Benedict? A. The signatures are. The signature E. Remington & Sons is made by Eliphalet Remington, treasurer and that of Wyckoff, Seamans & Benedict by Mr. Wyckoff.

The paper shown the witness is offered in evidence and marked "Complainant's Exhibit Extension of Contract for the Sale of Typewriters between E. Remington & Sons and Wyckoff, Seamans & Benedict, dated September 9, 1885."

233

60 Q. Do you remember whether there was any modification of the agreement of license between The Typewriter Company and the Remington Standard Typewriter Manufacturing Company in 1889? A. I do not remember the exact year without refreshing my mind by an examination of the paper, but there was a modification at or about that time.

61 Q. Do you remember what that modification related to, whether to the reduction of royalties or what? A. It had reference to the reduction of royalties.

62 Q. Do you remember whether in other respects the license theretofore existing was confirmed or re-
234 mained in force? A. I think that the license of June 13, 1881, which is in evidence, and which was the license existing prior to the modified license just mentioned, was somewhat extended in point of time; in other respects, except the modification in the amount of royalties the modified license was substantially the same. When I say extended in time, I think there might have been some additional patents issued between 1881 and 1889, and the license, as modified, was to exist during the lifetime of all the patents. Still I am not quite certain about that.

63 Q. Were you a stockholder of the Standard Typewriter Manufacturing Company, afterwards Remington Standard Typewriter Manufacturing Company, up to the time of its consolidation in 1892? A. I was a stockholder during the whole of that period and I was a director several years after April, 1886, but I think I ceased to be a director perhaps two years before the consolidation. 235

64 Q. What have you known of the business of Wyckoff, Seamans & Benedict as carried on at Ilion and elsewhere since 1892? Have you kept yourself informed as to their modes and methods of manufacturing at their factory at Ilion where their machines are manufactured? A. I have somewhat in a general way, but not very particularly since 1892. 236

65 Q. Have you visited their factory since 1892 and what, if anything, have you observed with reference to improvement in their works in the machiney, &c., thereof? A. I have visited the works occasionally. Since the date mentioned I should say, according to the best of my recollection, or at about that time, they have built on very large additions to the plant as existed when they purchased it, as already mentioned by me. I should say that they have more than doubled the amount of floor space and their machinery is of the very newest and finest kind and the plant is in every respect a model plant.

66 Q. How does it compare as to extent and equipment with the typewriter department as it existed prior to 1886, when the business was carried on by E. Remington & Sons, the predecessors of Wyckoff, Seamans & Benedict? A. Far larger in extent and capable of producing many times the number of machines which were or could be produced by E. Remington & Sons in that portion of their works devoted to the manufacture of typewriters, and far better in equipment and in the character and perfection of the machinery used for producing the typewriters. 237

238 CROSS-EXAMINATION by Mr. Fisher:

67 x-Q. Are you at the present time employed or retained by or in any manner interested in the complainant corporation? A. I am not retained nor am I employed, except very occasionally and in local matters by the present corporation. I am indirectly a stockholder in Wyckoff, Seamans & Benedict, but not directly. As I understand it, the capital stock of Wyckoff, Seamans & Benedict is all of it owned by a corporation known as the Union Typewriter Company, and I hold one hundred shares of the first preferred stock and not quite four hundred shares of the second preferred stock of the Union Typewriter Company.

239 68 x-Q. The firm and corporation, E. Remington & Sons, had acquired a world-wide reputation for their machines prior to the time when they embarked in the manufacture of typewriting machines, had they not? A. They had.

69 x-Q. Will you name some of the machines besides firearms in connection with which said reputation was acquired? A. The Remington sewing machines I should say had not been extensively sold in Europe, although very extensively in the United States. The reputation which the corporation had, so far as being world-wide is concerned, grew more particularly and chiefly out of their manufacture of firearms.

240 70 x-Q. The corporation had also acquired a favorable reputation, throughout this country at least, for agricultural implements also, had it not? A. Not so much so. The product of the Remington Agricultural Works was not generally designated by the name Remington. They manufactured, for instance, ploughs extensively which were known by the name Clipper plough. They manufactured mowing machines and harvesters which were in the former part of their history known as the Walter A. Wood harvester and mowing machine, and more lately as the Crawford. The hoes and minor agri-

cultural implements may possibly have had con- 241
nected with them the name Remington, although I doubt that; in other words, there was no such distinctive product of agricultural implement known by the name Remington, or with which the word Remington was associated, as was the case with reference to arms and sewing machines and later on typewriters.

71 x-Q. Who succeeded to the firearms business of E. Remington & Sons? A. The Remington Arms Company, a corporation.

72 x-Q. Does the Remington Arms Company make other articles than firearms? A. They have manufactured some sewing machines, but I think have not for some years, but they have for several 242
years past, and do now, manufacture extensively a bicycle which is known as the Remington Bicycle.

73 x-Q. Were all the No. 1 machines, that were made by E. Remington & Sons, marked like the machine that has been introduced in evidence and designated as Complainant's Exhibit The Typewriter Manufacturer's No. 1640? A. I cannot answer that question with certainty, but I should think not.

74 x-Q. Can you state in what way the markings varied between the years 1873 and 1877? A. I cannot, but my impression is that the words Sholes & Glidden ceased to be a part of the name marked on the machine before 1877 some time.

75 x-Q. Are you positive that this No. 1 machine 243
was commonly known to the trade and purchasing public as the Remington typewriter? A. I am quite positive that it was known as the Remington, but as I stated in my direct-examination, I think in substance, there was only one typewriter before the fall of 1880, or the spring of 1881, and it was probably as often known as and called The Typewriter as anything else.

76 x-Q. I call your attention to a Patent Office copy of registered trade-mark No. 15,376, registered by The Standard Typewriter Manufacturing Company April 17, 1888, and ask you whether the Stand-

244 ard Typewriter Manufacturing Company mentioned therein, is the corporation of that name to which you have referred in the course of your direct-examination? A. Undoubtedly. I may say that I have never seen that before that I know of, and that I had nothing to do with the registering of the trade-mark. It is unquestionably the same corporation referred to.

Counsel for defendant offers in evidence the Patent Office copy of certificate of registration of trade-mark No. 15,376, and the same is marked "Defendant's Exhibit Standard Typewriter Manufacturing Company, Trade mark No. 15,376."

245 It is admitted by counsel for complainant that the uncertified copy above introduced in evidence may be received with the same force and effect upon the hearing of this cause and upon appeal as if duly certified, subject, however, to correction in case of error in said certificate by reference to the original or a duly certified copy thereof.

77 x-Q. I call your attention to the fac-simile attached to the trade-mark copy last referred to and ask you to state, if you know, how long it has been the practice to employ such trade-mark in connection with typewriting machines? A. I am unable
246 to answer that question with any degree of exactitude or certainty. I remember the fac-simile as it is termed in the question and I know it has been used for a good many years, but when the use of it was commenced I am entirely unable to specify.

78 x Q. Was it not the practice of E. Remington & Sons to display such trade-mark upon the No. 2 typewriters manufactured by it? A. I am unable to say whether that trade-mark was gotten up, adopted or used before the sale by E. Remington & Sons to Wyckoff, Seamans & Benedict in 1886 or whether it was gotten up, adopted and used after that sale.

79 x-Q. You know, do you not, that a similar mark consisting of red circular disk-shaped seal containing an impression or representation of a typewriter has been prominently displayed upon the old No. 2 machines for many years past? A. I do know that fact. 247

80 x-Q. Is it not also a fact that for many years past, and at least since the year 1886, it has been the practice to mark machines bearing such trade-mark with the words "Remington Standard Typewriter, Manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A."? A. I do not think that the words "Manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A." were put on the machines until after the consolidation which I mentioned in my testimony, in or about 1892. 248

81 x-Q. Do you know what, if any, maker's name and address were placed upon the machines manufactured by E. Remington & Sons from 1877, until E. Remington & Sons ceased to manufacture typewriters? A. I suppose and think that the name of the manufacturer, E. Remington & Sons was placed upon the machines as manufacturers of them not only from 1877 to 1886, but before that, and I think that the address was given as Ilion, N. Y.

82 x-Q. Do you know what maker's name and address were placed upon the machines sold by Wyckoff, Seamans & Benedict after 1886? A. I do not remember. I shall have to assume that the name of the actual manufacturer was superimposed on the machines, for instance, the Standard Typewriter Manufacturer Company, from March, 1886, to January 1, 1889, and after that the name of the Remington Standard Typewriter Manufacturing Company until the time of the consolidation in or about 1892. 249

83 x-Q. I call your attention to a typewriting machine here before you, which has marked thereon "Remington Standard Typewriter No. 2," and upon the top of which a red seal like that shown in trade-mark No. 15,376 is displayed at three points,

250 and ask you to state for what length of time you have known typewriting machines to have such trade-mark thus displayed thereon? A. As I have already answered a somewhat similar question, I shall have to say that I do not remember with any degree of accuracy or certainty as to when the seal or trade-mark was superimposed or stamped upon the typewriting machines. I have seen it for a great many years, but I cannot say how many.

84 x-Q. Can you state for how long a time it has been the practice of the complainant company or its predecessors to mark the machines with the words "Remington Standard Typewriter No. 2." A. I cannot.

251 85 x-Q. What is your recollection in this regard? A. I have no recollection at all on the subject that would afford any light or give any reliable information on that subject.

86 x-Q. You know, do you not, that for many years past it has been the practice of the complainant company and its predecessors to prominently display upon the machine some arbitrary number, such as "No. 2"? A. I really cannot say. I have no knowledge or recollection on that subject.

87 x-Q. All the patents upon the No. 1 machine manufactured by E. Remington & Sons, I mean upon the machine like Complainant's Exhibit The Typewriter Manufacturer's No. 1640, have long since
252 expired, have they not? A. I should think so; must have, I think.

88 x-Q. Did you have occasian some time about the year 1896 to make an affidavit for use in connection with some German litigation concerning the right to the use of the word "Remington" in connection with typewriting machines? A. I did make such a deposition; just what year it was I can't state; it was somewhere about that date, I should think, and in that connection. If you will permit me, I will say that the time of the decease of Samuel Remington was incorrectly stated. I got the date from his brother Eliphalet, but I afterwards exam-

ined and ascertained more carefully and found that 253
the time of his death was as I have stated it in this deposition.

89 x-Q. Was such deposition given by you in the case of Glogowski & Company against Henry Newald before the Royal District Court, First Part, Berlin? A. It was.

90 x-Q. At whose request did you make such deposition? A. I made it at the request of Mr. Van Deusen, who was and is the general manager or superintendent of the typewriter works at Ilion, now belonging to the corporation, Wyckoff, Seamans & Benedict.

x-Q. 91. Do you know at whose expense and under whose direction the prosecution of said German 254
case was conducted? A. I do not. I was paid for my services in the matter, either by or through Wyckoff, Seamans & Benedict. There is another error which I would like to correct in the said deposition, although perhaps not at all material. I was informed at that time and was under the impression that Samuel Remington left a last will and testament, whereas he did really die intestate, as I had theretofore known and as I now remember.

92 x-Q. Is it not a fact that there was a considerable friction between James Densmore and G. W. N. Yost and the firm and corporation of E. Remington & Sons, and did not such friction exist during the greater part of the time covered by their busi- 255
ness relations? A. To be accurate, there never was any firm E Remington & Sons, if by that is meant a copartnership, after the early days of January, 1865. I am not aware and do not recall any friction between James Densmore and George W. N. Yost and the corporation E. Remington & Sons until after the return of Samuel Remington from Europe in November, 1877. The relations between Mr. Samuel Remington and Densmore and Yost were almost continuously strained. There never was any friction I think, at all between Mr. Philo Rem-

256 ington or Mr. Eliphalet Remington and Densmore or Yost.

93 x-Q. Within the past eight or ten years there have been a large number of different typewriting machines placed upon the market by various manufacturers, have there not? A. Yes, sir.

94 x-Q. And the competition has been quite sharp, has it not, and the different machines have been extensively advertised, have they not? A. I suppose that I shall have to say that there has been sharp competition, although it does not seem to have affected the sale of the Remington typewriter, which is larger than it ever has been, and is continually increasing. To the last part of the question,
257 about the advertising, I should have to say that there is considerable advertising.

95 x-Q. The result has been that for a number of years past the public has been advised of the fact that there are many different makes and styles of typewriters upon the market, has it not? A. That is true.

It is hereby stipulated by defendant's counsel that in so far as any papers which have been referred to and put in evidence in connection with the evidence of this witness, the execution of which has not been formally proven, that notwithstanding that fact, said papers shall be regarded as proven, so far as concerns their execu-
258 tion, and may be read and used at the final hearing of this cause with the same force and effect as if the execution of said papers had been proven in the usual way that is required by the rules of evidence.

(Signed) THOMAS RICHARDSON.

WILLIAM K. JENNE, a witness called on behalf of 259
the complainant, having been duly sworn, testifies as follows:

By Mr. Donnelly:

1 Q. Please state your name, age, residence aud occupation? A. William K. Jenne; age, sixty-two; residence, Ilion, New York; occupation, superintendent of the manufacture of typewriters.

2 Q. Will you please give your full name and state whether you sometimes write your name other than as William K. Jenne? A. My full name is William McKendree Jenne and is generally written so in patent applications or other cases where my full name is required. 260

3 Q. Please state where you are now engaged in the occupation of superintendent of the manufacture of typewriters? A. At the works of Wyckoff, Seamans & Benedict at Ilion, New York.

4 Q. How long have you resided at Ilion, New York? A. Something over thirty-seven years, since October, 1861.

5 Q. Were you ever in the employ of a concern by the name E. Remington & Sons, and, if so, when did you enter the service of such concern? A. Yes; in October of the year 1861, I was engaged by a firm by the name of Whitehouse & Plaisted, who had obtained a contract from the firm of E. Remington & Sons for the manufacture of the lock 261
work of a rifle, which the said E. Remington & Sons was about to manufacture and also for the manufacture of a pistol, which the firm of E. Remington & Sons was also about to manufacture. I was working for the firm Whitehouse & Plaisted in Holyoke, Mass., in the capacity of a tool maker and went with them to Ilion in that capacity, and engaged in making the tools necessary for doing their work on the said gun lock and pistol. After the tools were completed and they had engaged in the manufacture of the gun lock and the pistol for the said E. Remington & Sons, a portion of the pistol

262 work was given me to do by contract, I employing the men and turning out the work to be paid for by the said Whitehouse & Plaisted on their turning in the work to and its acceptance thereof by E. Remington & Sons. The said firm of Whitehouse & Plaisted failed to complete their contract with E. Remington & Sons and some two years, I should judge, or perhaps sooner, they gave up their contract and left the place. Then I was first employed directly by E. Remington & Sons and put in charge of the manufacture of the pistols, of which, previous to that time, I had been manufacturing a portion of for Whitehouse & Plaisted. From that time I was continuously employed by E. Remington & Sons
263 until they sold out their typewriter business in 1886.

6 Q. Then, if I understand your evidence, you were in the employ of E. Remington & Sons as a copartnership or firm prior to 1865, and after 1865 you were in the employ of E. Remington & Sons, a corporation, up to March, 1886; is that correct? A. It is.

7 Q. When and where did you first direct your attention to the manufacture of typewriting machines or to devising improvements therein? A. In the early part of the year 1873; I think in February, Mr. Clough, who was general superintendent of E. Remington & Sons' manu-
264 factory, brought a typewriter to a little room which I occupied as an office and tool room, and informed me that it had been brought there to be put into marketable shape and that the Remingtons, meaning E. Remington & Sons, of course, were going to make three sample machines, and that he would work it up there. Mr. Clough personally devoted a great deal of attention to the machine, and I was also engaged with him in getting out some models that we hoped would do the work as well and be more presentable to the public, the machine which came to us being very crude in its composition. We both engaged upon it

and I did a large portion of the work on the three machines with my own hands. When they were completed they were sent away for approval, sent to New York, I think, where they were examined by the parties who were interested in their manufacture, and although they expressed themselves pleased with the appearance of the samples, it was concluded that they were not just as good as they might be, and they were returned, and we then engaged in making another sample machine. The second sample machine, when completed, was practically the same as Complainant's Exhibit The Typewriter, Manufacturer's No. 1640. This sample was accepted, and shortly after that time we commenced on its manufacture. 265 266

8 Q. Previous to the time that Mr. Clough came to your room in the Ilion factory, as just stated, had you any knowledge that a model typewriting machine had been brought to the Ilion works of E. Remington & Sons, or was that the first you had had your attention called to the fact? A. On the same day, I think, before the machine was brought to my room I had seen it in another room of the factory, where it had been on exhibition.

9 Q. Who was present at the time when the model was first exhibited at the works of E. Remington & Sons, at Ilion, in February, 1873? A. Not being present at that exhibition, I could not say.

10 Q. Did you at that time know James Densmore and George W. N. Yost, or did you at the time you first saw this model meet either of those gentlemen, or see either of those gentlemen at the Ilion factory? A. I did not. 267

11 Q. Do you know who brought the model, which Mr. Clough showed you, to the Ilion factory in February, 1873? A. Yes; it was James Densmore and George W. N. Yost.

12 Q. How do you you know or how did you learn that fact? A. Well, I very soon became acquainted with both the gentlemen, and through our relations I soon became acquainted with the fact that they

268 were the parties who had brought the machine to Ilion.

13 Q. Did you make any arrangement with Yost or with Densmore at the time this model was brought to Ilion in February, 1873, or shortly thereafter, whereby you were to devote your attention and endeavor to improve this model typewriting machine? A. Not at the time the machine was first brought to Ilion, but after we had been working upon the models for some time Mr. Densmore told me that he wanted to get the best talent engaged in making the machine a success, that he had arranged with Mr. Clough that he was to have a royalty on the machines in consideration of an agreement to
269 turn over to the owners of the machine, or to the parties who had brought it there, any inventions that might be made at Ilion, but that I being so closely engaged in it in connection with Mr. Clough, it was quite probable that I would also have some invention that might be patented, and he would also allow me a royalty upon each machine, on the same consideration that I should turn over the patents of any inventions that I might make to the owners of the machine.

14 Q. Did you or did Mr. Clough make improvements and add improvements to the model machines and to other machines, which were afterwards manufactured by E. Remington & Sons between the years
270 1873 and 1886, when E. Remington & Sons ceased to manufacture typewriters? A. Yes, both Mr. Clough and myself.

15 Q. After the model machines were made and accepted as you have stated, did E. Remington & Sons then begin the manufacture of typewriting machines similar in structure and mode of operation to Complainant's Exhibit, The Typewriter, Manufacturer's No. 1640? A. They did.

16 Q. For how long a period of time and to what extent did E. Remington & Sons manufacture and sell, through their agencies, typewriting machines like said exhibit? A. They manufactured machines

practically like the exhibit, but with some modifications, at two or three different periods up to about the year 1886 or 1887 in considerable numbers, but I don't understand that they were sold through their agencies much, if any, during that time. The first of the machines were manufactured, as I understood it, on a contract from The Typewriter Company, and The Typewriter Company was to pay for them when completed, and manage their sales entirely, and the same was continued for several years, I think. 271

17 Q. Were any changes or modifications made in the machines illustrated in Complainant's Exhibit, The Typewriter, prior to 1877? A. Yes, there were some modifications made in about the year 1874 and other modifications also in about the year 1885, and again about 1886 or 1887, but the modifications did not particularly change the character of the machines. They were all manufactured to work upon the same general principles and all were fitted with one case of type consisting of capital letters, numerals and punctuation. 272

18 Q. Were the machines such as illustrated by Complainant's Exhibit, The Typewriter, Manufacturer's No. 1640, ever designated by a number, and if so, what number and when was such number first applied? A. They were and are designated as No. 1 typewriters. It was probably about 1876 when we contemplated manufacturing other kinds of machines. 273

19 Q. I notice that Complainant's Exhibit, The Typewriter, Manufacturer's No. 1640, bears the name "Sholes & Glidden." Were the first machines manufactured by E. Remington & Sons marked with that name as it appears on the exhibit which has been offered here in evidence, and, if so, for how long a period of time were those machines manufactured by E. Remington & Sons marked with the name Sholes & Glidden? A. They were so marked, until, I think, about the year 1875.

20 Q. Were they so marked from the time that E. Remington & Sons first began to manufacture

274 typewriting machines after the models that you have mentioned were completed? A. They were.

21 Q. Were such machines designated as the "Sholes & Glidden" machines for any period of time after 1875, when you say you think E. Remington & Sons ceased to mark said machines with the name "Sholes & Glidden?" A. At first they were quite generally called the Sholes & Glidden machines, but after a time it became known generally as a Remington machine, and I am not quite clear about the date, but I think it was about 1875, some time in the year 1875 when the name Sholes & Glidden was left off the machines altogether, and from that time they have been generally known as the Remington ma-
275 chines.

Adjourned to Thursday, February 23, 1899, at 10.30 A. M., at the same place.

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NEW YORK, February 23, 1899,
10.30 A. M.

Met pursuant to adjournment.

Present—Counsel as before.

276 DIRECT-EXAMINATION of WILLIAM K. JENNE continued:

22 Q. In your answer to direct question 16, in which you were asked for how long a period E. Remington & Sons manufactured and sold typewriters through their agencies, like Complainant's Exhibit The Typewriter, Manufacturer's No. 1640, you said, "They manufactured machines practically like the exhibit, but with some modifications at two or three different periods up to about the year 1886 or '87 in considerable numbers." Do you desire to make any change or correction in that statement, and if so, in

what respect? A. Yes. I desire to say that the 277
words "1886 and 1887" were misspoken. I intended to have said 1876 and '77. As regards my answer to direct question 17 where I referred to the years 1885, 1886 and 1887, I meant to say 1875, 1876 and 1877.

23 Q. When was the first machine completed at the works of E. Remington & Sons which embodied type bars provided with upper and lower case letters combined with a shifting platen? A. I think it was in the latter part of 1876; it possibly might have been early in 1877.

24 Q. By whom and under whose supervision was the first upper and lower case typewriter developed and constructed at the works of E. Remington & Sons? 278
A. It was under my supervision, as being then in charge of the typewriting department of the manufacturing firm E. Remington & Sons, and with the assistance of Mr. Geo. W. N. Yost.

24 Q. About when, as nearly as you remember, was the upper and lower case machine put upon the market for sale? A. I think in 1877.

25 Q. After the upper and lower case machine was put upon the market, as you think, about 1877, did E. Remington & Sons manufacture it, and if so, to what extent and for how long a period? A. They did from that time until they sold out the typewriter business in 1886 and to the extent of many thousand machines. 279

26 Q. After E. Remington & Sons began the manufacture and sale of what became known as the upper and lower case machine, were such machines designated by number, and if so, what number? A. They were; the first machine of that kind and style being denominated the No. 2 machine; the next style machine manufactured with an upper and lower case type was called the No. 5; the next was called the No. 3.

27 Q. After E. Remington & Sons began the manufacture of the upper and lower case machine which became known as the No. 2, did they manufacture

280 machines like Complainant's Exhibit The Typewriter, Manufacturer's No. 1640, and if so, for how long a time and to what extent? A. The manufacture of the No. 1 machine was continued for perhaps a year or so after the No. 2 came on the market; but the demand for them gradually fell off until finally it entirely ceased, and no new No. 1 machine has been manufactured for the past fifteen years or so.

28 Q. After the corporation E. Remington & Sons sold its typewriter business to Wyckoff, Seamans & Benedict, and the Standard Typewriter Manufacturing Company, subsequently known as the Remington Standard Typewriter Manufacturing Com-
281 pany, were any other styles or improvements in upper and lower case machines made, and if so, were they designated by numbers, or how? State what you know on that subject. A. I think that no new styles designated by different numbers than those already in use were manufactured during the existence of the manufacturing companies, "The Stand ard Typewriter Manufacturing Company" and the Remington Standard Typewriter Manufacturing Company.

29 Q. Have any other styles or numbers in upper and lower case machines been brought out or put upon the market since Wyckoff, Seamans & Benedict corporation was formed and engaged in the
282 manufacture of typewriting machines, and if so, please state what they are as regards numbers? A. There has been three other styles since the style No. 3 was introduced in the market, and I think they were all gotten out since the corporation Wyckoff; Seamans & Benedict have been the manufacturers. They are called first the No. 6, next the No. 7 and next the No. 8.

30 Q. Have these various numbers been used to designate differences in details of structure in the upper case machines designated Nos. 2, &c., to No. 8? A. They have and are.

31 Q. To what extent did E. Remington & Sons

manufacture and sell upper and lower case machines prior to March, 1886? A. I do not recollect exactly; something over twenty thousand, I should say. 283

32 Q. Have the sales of the upper and lower case machines and the manufacture of such machines by the Standard Typewriter Manufacturing Company, the Remington Standard Typewriter Manufacturing Company and Wyckoff, Seamans & Benedict corporation largely increased since 1886? A. They have.

33 Q. Has the typewriter business of which you have been the superintendent at the factory of E. Remington & Sons and its successors been a constantly growing and increasing business with regard to the manufacture and sale of typewriting machines from 1873 up to the present time? A. It has been a constantly growing business with scarcely any interreuption from the beginning up to the present time. The first year there was probably not more than two hundred or three hundred machines made during the year, while the last year there was something like twenty-five thousand, I think. 284

34 Q. What do you mean by "first year" in your last answer? A. I mean that from the construction of the first machine that was put on the market until three hundred of them were put on the market was probably about a year.

35 Q. What year do you refer to, 1873 or 1874? A. The year 1874.

285

36 Q. If you know, state where and in what countries the typewriting machines which have been manufactured by E. Remington & Sons, the Standard Typewriter Manufacturing Company, the Remington Standard Typewriter Manufacturing Company and Wyckoff, Seamans & Benedict corporation have been sold? A. They have been sold in all the States and Territories of the United States, in Canada, in Mexico and nearly, if not all, the South American States, in England and Norway, in Sweden, in Germany, in France, in Italy, in Portugal, in Hungary, Bohemia, Russia, Turkey, in

286 Africa, in Australia, in New Zealand and in the West India Islands, and probably other places.

37 Q. After E. Remington & Sons sold the typewriter business to Wyckoff, Seamans & Benedict, and it was acquired by the Standard Typewriter Manufacturing Company, where was the manufacturing business carried on? Was it continued in the same place, or was it removed to some other building or place? A. It was continued in the same place for about three years, occupying the same rooms that had been devoted to the typewriter department by E. Remington & Sons during their manufacture of the said machines with one or two additional rooms which were leased of them for the purpose.

287 38 Q. Were the same tools used that had theretofore been employed when E. Remington & Sons carried on the business? A. They were. The sale by E. Remington & Sons included all the machines and special machinery, tools, stock either partially manufactured or otherwise, and all machines in process of construction at the time of the sale, and the manufacturing was carried on without intermission with the same tools and by the same men who had been employed for that purpose by E. Remington & Sons.

39 Q. Was the manufacturing department, that is to say, the place where typewriters were manufactured, subsequently changed or removed to any other building, and if so, about when and where? A.

288 It was removed to a building known as the Remington Agricultural Works, situated about an eighth of a mile from the place where the typewriters had been manufactured, and at about the date of the expiration of their three years' lease, which would bring it probably in the year 1889.

40 Q. After the removal of the typewriter business from the rooms in the armory plant of E. Remington & Sons to the Remington Agricultural Works, were any changes made in said works in the way of increasing their size or capacity, and in the way of adding new and improved machinery for the manufacture of typewriting machines? State, briefly, what

you know on that subject? A. Almost from the 289
date of the removal to the new works, the company commenced purchasing new and latest style of machines by which to add to the facilities for the manufacture of the typewriter in greater numbers and of better quality if possible, and nothing has been spared from that time to the present which could be made to benefit either the quality of the machine or in any way facilitate its manufacture. Every special tool or machine, which has been recommended by the superintendent and manager of the company, has been immediately purchased without demurrer, and the plant has been increased by the addition of a new building, which includes a greater amount of floor space than had theretofore been occupied in the 290
manufacture of the machines.

41 Q. In 1874 when E. Remington & Sons were engaged in the manufacture of typewriting machines, about how many persons were employed in and about the typewriter department, of which you were then superintendent? A. I should say that there were about one hundred and seventy-five to two hundred.

42 Q. About how many persons do Wyckhoff, Seamans & Benedict now employ in and about their typewriter works at Ilion? A. About eight hundred.

43 Q. Has this typewriter business which was founded by E. Remington & Sons in 1873 been con- 291
tinuously carried on by E. Remington & Sons and its successors without interruption down to the present time? A. It has.

44 Q. How have the typewriting machines of E. Remington & Sons and its successors, Standard Typewriter Manufacturing Company, Remington Standard Typewriter Manufacturing Company and Wyckoff, Seamans & Benedict been generally designated and known in the market since about 1880? A. So for as I know they are generally designated Remington Typewriter No. 2, No. 3, No. 4, No. 5,

292 No. 6 or No. 8, according to the style of machine spoken of.

45 Q. Did you know Samuel Remington in his lifetime? A. I did.

46 Q. How soon after you went to Ilion in 1861 did you become acquainted with Samuel Remington? A. I don't know.

47 Q. Can you state approximately? A. Of course I became acquainted with him by sight very shortly after I had arrived at Ilion, but in the first year or so of my stay there I was working for a subordinate firm and had no direct contact with any member of the firm of E. Remington & Sons in particular, and so far as my recollection goes, Mr. Samuel
293 Remington was not very much about the works looking after the manufacturing or methods of doing the work, while Mr. Philo Remington seemed to be the man who attended to that part of the business, and I often had conversations with that member of the firm even while working for the subordinate firm, but my acquaintance with Mr. Samuel Remington was formed later on, and I have no particular recollection of when it was first formed. It might have been within two or three years after my arrival at Ilion.

48 Q. Can you say whether or not you knew Samuel Remington prior to 1873, I mean personally? A. Yes, I did.

294 49 Q. Between the years 1873 and up to the year 1886, which of the Remington brothers, if either of them, frequented the typewriter department or looked after that department, if either of them can be said to have done so? A. Mr. Philo Remington frequently visited that department and seemed to take a good deal of interest in it and seemed anxious to make it a success. Mr. Samuel Remington nor Mr. Eliphalet Remington either of them never visited the department to my knowledge more than possibly to pass through the room occasionally.

50 Q. Do you know whether Samuel Remington visited the Remington arms works, or the typewriter department of E. Remington & Sons to any extent between the years 1873 and his death in 1882? State what you know or remember on that subject? A. After his return from Europe, about 1877, I think he was at the office of the manufacturing company and seemed to be taking considerable interest about the works for a time, but, if I recollect aright, he did not long remain there, but shortly removed to the selling office in New York. I have only a recollection of one instance of his visiting the typewriter department during that time, and that was shortly after his arrival there; he came in, bid me good day, and asked me some questions about this work, and then said rather abruptly that he regretted very much that his brothers had engaged in any such enterprise during his absence, and that had he been there they would not have entered into it at all. He said that the company had been brought in debt by it, and as he seemed to be rather throwing the blame onto me, as being the superintendent of that department, I informed him that if the company had lost money by its introduction of the typewriter, it was not on account of the manufacturing of the typewriter, but on account of their trusting more money in the hands of Mr. Yost, or otherwise giving him a greater credit than he deserved; that I thought that the first five hundred typewriters manufactured at Ilion were done under a contract whereby E. Remington & Sons were assured of a certain amount of money for the first five hundred machines built, that that first five hundred machines had been manufactured far within that sum, and that all typewriters that had since been manufactured had not cost more than the sums which had been paid them for it, and that I thought there was still a future success for the typewriter business; but he did not agree with me, and said that he was sorry they had ever ventured in it. 295 296 297

298 51 Q. So far as you observed and know, did Samuel Remington occupy a friendly or unfriendly attitude toward the typewriter enterprise which had been taken on by his brothers during his absence in Europe? A. Decidedly unfriendly.

52 Q. To your knowledge, did Samuel Remington ever devise or suggest any improvements in typewriting machines, or any improved method in the manufacture thereof? A. I have no recollection that he ever did.

53 Q. Do you know, or have you ever been acquainted with a son of Samuel Remington by the name of Franklin Remington? A. I know that he had such a son, but I never was acquainted with
299 him; never saw him more than once or twice to my recollection.

54 Q. Did Franklin Remington, the son of Samuel Remington, ever have anything to do with the arms business or the typewriter business of E. Remington & Sons during the time that you were employed by them between the years 1873 and 1886, or prior thereto, so far as you know or have learned? A. No.

55 Q. Did you ever know a son of Samuel Remington's by the name of Carver Remington? A. Yes.

56 Q. During the time you were employed in the typewriter department of E. Remington & Sons, of
300 Ilion, did Carver Remington ever have anything to do with that department or manifest any interest therein, to your knowledge? A. No.

57 Q. What do you know with reference to Carver Remington's being employed, or engaged in any service in or about the Remington Arms Works at Ilion? State what you know or remember as regards that matter? A. I know but very little about it. He was at one time in the office of the Company at Ilion, but I do not know what his duties were or how he performed them.

58 Q. Did you ever see him in any part of the works besides the office looking after any part of the

business, or manifesting any interest in the business 301
of manufacturing arms or typewriters or whatever else was being manufactured in those works? A. I do not recollect ever seeing him about the building or in any place except its office, and I have never known him to take any interest in any part of the manufacture of typewriters or other work done by the firm.

59 Q. Did you ever know of Carver Remington's making any improvements, or suggesting any improvements in typewriting machines or the manufacture thereof, during the time he was at Ilion or lived at Ilion and you were acquainted with him? A. No, I have no recollection of anything of the kind. 302

60 Q. Was the typewriting machine manufactured by E. Remington & Sons the first typewriting machine, I mean commercial machine, which was ever put upon the market to your knowledge? A. It was the first, I believe.

61 Q. About how long did it continue to be the only typewriting machine on the market so far as you know or remember? A. I think until about 1880, or until the time when the Caligraph came on the market, whatever time that might be.

62 Q. Prior to the time when the machine known as the Remington-Sholes, or Rem-Sho machine, came into the market did you ever know of any typewriting machine, except that first manufactured by 303
E. Remington & Sons, which bore the name or was designated by the name Remington? A. I never knew of any other typewriting machine bearing the word "Remington," or known by the name Remington, except those that were manufactured by E. Remington & Sons and their successors until the said Remington-Sholes, or Rem-Sho, machine came upon the stage.

63 Q. I call your attention to United States Letters Patent 199,263, dated January 15, 1878, issued to Jefferson M. Clough and William K. Jenne, and ask you to examine the same and say whether you

304 are the William K. Jenne in said Letters Patent named, and whether Jefferson M. Clough, therein named, is the Mr. Clough to whom you have referred hitherto in your testimony as the superintendent of the works of E. Remington & Sons, and with whom you were associated and labored in making and devising improvements when the first model typewriting machines were made at Ilion, in or about the year 1873 or 1874? A. The Jefferson M. Clough mentioned in the patent is the Mr. Clough who was superintendent of E. Remington & Sons about the year 1873 and with whom I was associated in making the typewriter models, and I am the William K. Jenne mentioned therein.

305 Counsel for complainant offers in evidence the certified copy of United States Letters Patent No. 199,263 issued to Clough & Jenne January 15, 1878, and the same is filed in evidence and marked "Complainant's Exhibit Clough & Jenne Patent No. 199,263."

Counsel for defendant objects to the introduction of the patent as immaterial and irrelevant.

63½ Q. You have already stated in your deposition that the first model brought to Ilion by Yost and Densmore was crude. Will you please state in what respects, if any, said model was crude? A. Well, the workmanship was crude and the general con-
306 struction was considered crude. The castings were not very well proportioned for the construction of the machine, the dogs which operate with a rack as a letter-spacing device was screwed to two blocks of wood instead of being made of metal, as a mechanic would naturally think they ought to be; the type bars were of round wire bent up at the ends and with a capital letter engraved upon the end, the capital being made in the simplest form of Gothic type, and the type bars had no means of adjustment for the purpose of aligning the type, making it necessary to bend the bars to move the type in either di-

rection if necessary to put it in proper relation with other letters. 307

CROSS-EXAMINATION by Mr. Fisher:

64 x-Q. After E. Remington & Sons ceased marking the No. 1 Typewriter with the words "Sholes & Glidden," what other method of marking was adopted for those machines? A. According to the best of my recollection the No. 1 machine was never marked with any name after that.

65 x Q. Were not such machines marked with the words "The Typewriter Manufactured by E. Remington & Sons, Ilion, New York"? A. I do not think that they were; however, I will not say positively that they were not.

308

66 x-Q. The name and address of the manufacturers were marked upon the machines, were they not, in some way? A. I think that no name was put on any No 1 machines after the words "Sholes & Glidden" were left off. I am not positive, however.

67 x Q. Do you recall how the No. 2 machines were marked when E. Remington & Sons began to manufacture such style of machine? A. It is my impression that they were not marked with any name during the manufacture of the first two or three hundred machines, but after that, when they were remodeled in 1879 they had the manufacturer's name on the bar that crosses between the two front posts that support the top plate, at which time they were inscribed "Manufactured by E. Remington & Sons, Ilion, New York." 309

68 x-Q. And from that time to the present it has been the practice to conspicuously display upon the machines the manufacturer's name and address, had it not? A. It has.

69 x-Q. I call your attention to trade-mark No. 15,376, registered by the Standard Typewriter Manufacturing Company in the U. S. Patent Office April 17, 1888, and ask you if it has not been the practice of the complainant company, and if it was not also the practice of E. Remington & Sons to

310 place upon their typewriting machines a trade-mark like the fac-simile red seal attached to said trade-mark No. 15,376? A. It has been the custom of these companies to attach a seal very similar to this, though a little smaller, and with the inscription in gilt instead of white to all machines manufactured since 1886, and probably for some year or two previous to that date.

70 x-Q. This trade-mark has been displayed upon the top plate and also upon the paper table of each machine during such time, has it not? A. Yes, practically; there may have been some exception in the case of some special machine or two, or a few machines, perhaps, but as a rule all machines have
311 been embellished with this seal and in the two places mentioned.

71 x-Q. On the Remington Standard typewriter before you I find the words "Remington Standard Typewriter No. 2," marked upon the front of the machine base. Please say how long it had been the practice of complainant company or its predecessors to so mark the machines? A. I do not exactly recollect. I should think since about 1892.

72 x-Q. When was the manufacture of the No. 2 machine abandoned? A. I can hardly say that it is abandoned yet. There have been No. 2 machines manufactured within a year.

73 x-Q. It is the practice to mark each machine
312 with some number indicating the particular pattern of the machine, is it not? A. It is.

74 x-Q. And such practice has prevailed for some years past, has it not, with complainant company and its predecessors? A. It has prevailed for some years with the complainant company, but I am not certain that it was introduced by any of the predecessors of the present company. I think that the placing of the model number upon the front of machines was started at about the date that Wyckoff, Seamans & Benedict became the manufacturing company.

Recess.

(Signed) W. K. JENNE.

AFTER RECESS, 2 P. M. 313

THOMAS F. CREAN, a witness called on behalf of complainant, having been duly sworn, testifies as follows:

By Mr. Donnelly:

1 Q. Please state your name, age, residence and occupation? A. Thomas F. Crean, 1189 Herkimer street, Brooklyn; manager of the Pittsburg office of Wyckoff, Seamans & Benedict; age, thirty-two.

2 Q. Are you by profession, or practically, a stenographer and typewriter? A. Yes, sir; I am.

3 Q. For how many years have you been such; that is to say, what practical experience have you 314
had in that regard? A. About seventeen years ago I took up the studies of shorthand and typewriting, and for about twelve years thereafter was professionally a shorthand writer and user of typewriting machines in New York City.

4 Q. Have you within the past few months made any investigation or inquiries concerning the Remington-Sholes typewriter, or Rem-Sho typewriter, with a view to determining how that machine is sold or represented by the agents for or dealers in such machine? A. Yes, I have.

5 Q. What places have you visited for that purpose? A. The cities of Philadelphia, Baltimore, Washington, Camden, and Montreal, Canada. 315

6 Q. When did you visit Montreal, Canada, for the purpose of investigating the sales of the Rem-Sho machine, or Remington Sholes machine, with a view to determining how that machine was sold by the agents for the sale thereof or by dealers in said machines? A. On August 7, 1898.

7 Q. State whom you visited at Montreal for the purpose stated in my last question? A. Messrs. Clement & Clement, whose offices, as I recall it, are in the Railroad Building, in Montreal.

8 Q. At the time of this visit on the 7th day of August, 1898, did you there at the office of Clement

316 & Clement see or were you there shown typewriting machines known or designated by the name Remington-Sholes, or Rem-Sho?

Counsel for defendant objects to the foregoing question as immaterial and irrelevant.

A. I saw several machines in that office of that make.

9 Q. Had you seen such make of machine before and were you then familiar with its construction and mode of operation? A. Yes, sir. Previous to that time I had frequently seen and examined machines of that make.

10 Q. What else, if anything, besides the machines
317 did you see about the office of Clement & Clement indicating that they were agents for or dealers in the Remington-Sholes, or the Rem-Sho typewriter?

Same objection.

A. The printed catalogues of the Remington-Sholes machine were on a table in that office, and on the door entering the office there had been painted on the glass the words "Remington-Sholes Typewriter."

11 Q. When you entered the office of Clement & Clement did you make any inquiry of any person in the office and, if you know, state whom and what inquiry you made and what response you received to
318 the inquiry?

Same objection.

A. I asked a young man whom I met on entering to be shown to Mr. Clement. He asked me which Mr. Clement I desired to see, and I stated it made no difference, either member of the firm would do. I was shown into an inner office by the young man who introduced me to a gentleman who appeared to occupy the inner room. This gentleman, the young man told me, was Mr. Clement, the senior partner and the gentleman referred to so announced himself. I stated I called to learn the

address in Montreal of the office of the Remington typewriter. He answered, "This is the office of the Remington typewriter in Montreal," after which he took me to the outer room, where I originally entered, which appeared to be a kind of salesroom, and there took me over to a machine which he pointed out to me as a Remington machine. The machine he showed me was a Remington-Sholes machine. I remained in the office for probably twenty-five minutes to half an hour, and during all that time was engaged in conversation with the gentleman referred to. Among other things, he told me that his firm had been recently appointed agents for the machine in Montreal, that the machine was made by the inventors and former manufacturers of the old Remington machine, that his was the new improved Remington machine. I asked the question as to why the name Sholes was used on the catalogues, and he told me that a Mr. Sholes had made some recent improvements on the old Remington, and that these recent improvements had been embodied or combined with the good features of the old machine, and that the machine, which he showed me, was the result of the combined efforts of the Remington people and Mr. Sholes. 319 320

12 Q. Was that the only interview you had with Mr. Clement?

Same objection. 321

A. It was, yes, sir.

13 Q. At that interview were any catalogues or advertising media showing or illustrating the Remington-Sholes typewriter shown you? If so, state what was shown you in that regard?

Same objection.

A. Yes, sir. Mr. Clement handed me one of the Remington-Sholes catalogues, a large quantity of which were on a table in the salesroom. It was a copy of the catalogue such as I have seen in various

322 offices of the Howe Scale Company, a copy of which I have here.

14 Q. When did you visit Baltimore for the purpose of ascertaining how the machines known as the Remington-Sholes, or Rem-Sho machine, were being sold and offered for sale by agents or dealers in that city, and whom did you there visit for that purpose, if anybody? A. On October 4, 1898, I called at the office of the Tribune Cycle Company, No. 105 West Fayette street, Baltimore. A Mr. Roger E. Lewis, of Baltimore, was present with me at the time. I saw Mr. J. T. Gillelan, who told me he had charge of the typewriter department of the business.

15 Q. What, if anything, do you know or did you
323 ascertain with reference to this Tribune Cycle Company being the agent or representative of the Howe Scale Company of 1886 in Baltimore at that time? A. Mr. Gillelan told me in answer to a question that his company, the Tribune Cycle Company, was the representative of the Howe Scale Company for the sale of Remington-Sholes typewriters in Baltimore.

16 Q. Without reference to what he told you, what did you there see or learn from observation indicating or tending to show that that was the office of the Howe Scale Company and the place where Remington-Sholes typewriters were offered for sale. A. Catalogues similar to those already referred to were
324 on a desk just inside of the entrance, and on these catalogues the name of the Howe Scale Company was prominently displayed.

17 Q. Did you see any typewriting machines in that place at the time of your visit? A. Yes, sir; one whole side of the store was devoted to an exhibition of typewriting machines. There were eight or ten Remington-Sholes machines displayed.

18 Q. Confining yourself entirely to inquiries which you made and to responses which were given to such inquiries concerning the Remington-Sholes machine or its origin, state briefly what was said or done and what occurred at that Baltimore inter-

view? A. I said to Mr. Gillelan that I called at the 325
suggestion of a Mr. Johnson, of Washington, who had advised me that he, Mr. Gillelan, had an improved Remington typewriter. Mr. Gillelan said yes, he knew Mr. Johnson and recalled his having been at the store and having looked the machine over. Mr. Gillelan said yes, he had an improved Remington and he would be glad to have us look it over. While examining the machine, I asked Mr. Gillelan the direct question, is this a Remington machine, to which he replied, "Yes, it is the new Remington; it is manufactured by the former manufacturers of the old Remington and was invented by the inventors of the old Remington." During our conversation at three different times I asked the 326
question, "Is this a Remington machine"? and "Is this an improved Remington"? To each question Mr. Gillelan replied, "Yes, it is. It is the new Remington and is a decided improvement over the old Remington." Mr. Gillelan told me that the Mr. Remington and Mr. Sholes, whose names were applied to the machine, which he was offering, formerly made the old Remington which they sold some time ago to people called Wyckoff, Seamans & Benedict. That these latter people were now making the old Remington, so that the old Remington was no longer being manufactured by the Remington people, but by three individuals, Wyckoff, Seamans and Benedict, and that the only typewriting machine which 327
the Remington people were now manufacturing was the Remington-Sholes typewriter.

19 Q. Have you now stated the substance of your interview with Mr. Gillelan with reference to the Remington-Sholes machine and its origin, &c.? A. Yes, sir.

20 Q. What did you observe or see indicating that Mr. Gillelan was in charge of the typewriter department of the Tribune Cycle Company, at whose place of business you visited? A. Mr. Gillelan was entirely alone in the store and he advised me that he was in charge of the sales of typewriters there.

328 21 Q. What else besides typewriters did you see in that store at that time? A. There were some typewriter desks and a number of bicycles.

22 Q. Did you know of your own knowledge, or do you now know of your own knowledge, that said Cycle Company were the representatives of the Howe Scale Company for the Rem-Sho typewriter at the time of your visit above mentioned? A. A Mr. F. L. Sholes was in the store of the Cycle Company, when I first entered, engaged in conversation with Mr. Gillelan. Shortly after I entered Mr. Sholes left the store. I knew Mr. Sholes to be in general charge of the Washington and Baltimore offices, and inferred from his presence there that Mr. Gille-
329 lan's statement as to his being the representative of the Howe Scale Company was correct.

23 Q. Did you visit Washington, D. C., for the purpose of ascertaining whether the Remington-Sholes typewriter was sold in that city, and if so, when and where did you find the office in that city, if you did find one? A. Yes. On September 20th and October 15th, 1898, I found the Washington office of the Remington-Sholes typewriter at No. 612 Fourteenth street.

24 Q. Now, will you please state briefly, when you visited the office at that time, whether you there saw Remington-Sholes machines for sale, and what questions you asked and responses
330 you received to such questions concerning the Remington-Sholes machine? A. On the occasion of my first visit, September 20th, I met a gentlemen in the office referred to, who told me he was Mr. Fred. L. Sholes, and that he had general supervision of the Baltimore and Washington sales offices of the Remington-Sholes machine. He showed me a Remington-Sholes machine, and told me that his uncle, who was the original inventor and had been the manufacturer of the Remington machine, had combined with the Remington people and that together they were making the Remington-Sholes typewriter. He said that inasmuch as the old Remington was no

longer made by the Remington people, but by a firm 331
called Wyckoff, Seamans & Benedict, that his machine was now the only Remington machine on the market. I suggested to Mr. Sholes that I might be able to influence an order through the Army Department for a Remington machine, and asked him if it would be entirely safe to fill the order with a Remington-Sholes machine. He told me he would not hesitate for one moment about filling the order, if I could obtain it, with one of his machines, and he told me he would pay me personally ten dollars for my influence in having the order sent to him. On the occasion of my second visit, October 5th, Mr. Sholes was not present in the office. Mr. Sholes' desk was occupied by a young man, who told me 332
he had local charge of the sales of Remington-Sholes machines in Washington, under the supervision of Mr. Sholes. A Miss Sarah B. Danaher, of Washington, was present with me during the second visit. I said to the young man I called to look at a typewriter, and he invited us to step over to the further part of the room where some Remington-Sholes machines were exhibited. I said to the young man I had been advised that his machine was an improved Remington. He replied: "Yes, it is; it was invented by the inventors of the old Remington and is made by the people who make the old Remington; it has all the good points of the old Remington and many new ones in addition." 333
When he spoke the first time of the old Remington, he turned towards an old No. 2 Remington typewriter which was in the opposite corner of the room, and nodded in that direction, indicating that that was the machine he referred to as the old Remington. We talked about the price of the machine, and he said as his machine was not controlled by any combination as the old Remington was, that he was able to offer it at eighty-five dollars. He said: "You see, this machine was invented and is being made by the same people who make the other Rem-

334 ingtons, but as no one controls Mr. Sholes, he is able to sell it at the lower price."

25 Q. Did you subsequently visit Philadelphia, or before that time, for the purpose of ascertaining how the Remington-Sholes typewriter was being represented or offered for sale in that city, and if so, please state when it was? A. Yes, sir. I made several visits to Philadelphia both before and after my visit to Washington. The date of my first visit to Philadelphia was July 19, 1898.

26 Q. On the occasion of any of these visits to Philadelphia, or all of them, did you visit or communicate with the office of the Howe Scale Company in that city for the purpose of purchasing or
335 obtaining information concerning the Remington-Sholes typewriter; if so, please state briefly and clearly what you did in that regard? A. On July 19th I went to the Hotel Lafayette in Philadelphia, and over the telephone talked with the Howe Scale Company. I asked the bookkeeper, who came to the telephone, to call some one to the telephone in his office who had to do with the sale of typewriting machines. In a moment some one else talked to me over the telephone, and I said to him I was at the Hotel Lafayette and was very much occupied and would like to have him come to the hotel to talk to me in relation to typewriters. The voice at the other end of the telephone said he would come at once to the
336 hotel. In a few moments a gentleman called at the hotel and handed me his card which bears the name W. J. Romig. Mr. Romig spent a few moments with me and left me to return later in the day at an hour appointed. At the appointed hour Mr. Romig returned to the hotel and spent an hour with me in a general conversation in relation to the Remington-Sholes machine. Mr. Romig told me in substance that the machine he was offering was an improved Remington machine; that it was made by the former manufacturers of the old Remington, but was being handled through the Howe Scale Com-

pany by the Remington-Sholes Company, whose 337
office was in Chicago. He said to me that the Remington machine was at present not manufactured by the Remington Company but by Wyckoff, Seamans & Benedict, and that his was really the Remington machine. I suggested to him there might be an opportunity for doing some business in the sale of typewriting machines on the Island of Jamaica, West Indies, and that the only machine known there was the Remington machine. He said that would certainly help his being able to do some business with me as his was the only machine outside of the old Remington which could be offered or sold as a Remington machine. He told me of former Remington agents in various foreign countries, 338
mentioned particularly, Holland, South Africa, and Australia, who had given up the handling of the old Remington in order to handle the new improved Remington. He told me of orders that had been taken from the Department of Agriculture for one hundred machines, where the preference had been given his machine over the old Remington; he also told me of an order placed by the Department of Justice at Washington for thirty of his machines. Both of these orders, he said, had been awarded the Howe Scale Company for Remington-Sholes machines in preference to the old Remington machines. After finishing the conversation with Mr. Romig I suggested to him that I would like to have 339
him go to his office and write me a formal letter covering the details referred to in our conversation and that I would wait at the hotel for him to return with such a letter. Mr. Romig left me and in about an hour thereafter returned and handed me a letter covering certain portions of our conversation and omitting others I suggested to Mr. Romig that one fact, which he cited in our conversation, had not been covered by him in his letter; and that was the fact that the Remington machine was not being made by the Remington Company and that his was really the Remington machine. Mr. Romig apolo-

340 gized and said he had intentionally omitted any reference to that point for the reason that his company did not care to put a statement of that kind in writing. He said that the statement was entirely true and they did not hesitate to make similar statements wherever the question was asked. I told Mr. Romig that unless he gave me a letter covering that point I preferred to have no letter at all. He thereupon told me that, if I insisted on it, he had no particular objection in my case in making the statement in writing. I told him I thought it might be useful to have such a statement and he took the letter which he had a few moments before handed me and wrote at the foot of the second page
341 the following paragraph:

"It might prove of interest to you to know that "the Remington machine at present is not manu- "factured by the Remington Company, but by "Messrs. Wyckoff, Seamans & Benedict, so that "this is really *the* Remington machine." This statement Mr. Romig attached in his own handwriting in my presence, at the same time signing it The Remington-Sholes Company, per Romig. He suggested, if I wanted the letter in any more complete form, he would be glad to accommodate me. This ended the conversation with Mr. Romig, who left me thereupon.

On September 16, 1898, I visited Camden, New
342 Jersey, and from a hotel, which I believe is called the Atlantic, I telephoned to the Philadelphia office of the Howe Scale Company and asked them to send some one to Camden to talk with me about a typewriting machine about which we had formerly had some correspondence. In about half an hour a Mr. Wilgus called at the hotel and told me he came representing the Howe Scale Company from their office in Philadelphia. I showed Mr. Wilgus the letter which Mr. Romig had given me, and after he read it he said yes he knew of such a letter having been written and that it was all right and that he would

be glad to carry out the terms of the letter and sell 343
me a machine. He spent about half an hour with me, during which time we talked over in a general way the Remington-Sholes machine. In his conversation he made practically the same statements which Mr. Romig had made as to his machine being really the Remington machine, and as to its having been manufactured and invented by the former manufacturers and inventors of the Remington machine. Before leaving me I asked Mr. Wilgus to give me some printed matter in relation to his machine, and he handed me the catalogue of the Remington-Sholes machine, which I have already referred to, and in addition to it some newspaper clippings and copies of advertisements referring to the 344
Remington-Sholes machine. I asked if he did not have something in the way of printed matter covering the mechanical features of the machine, that is, covering such points as a saleman should be posted about in talking the machine to customers. He said yes, "I have my private letter of instructions which I don't object to showing you, although it is intended for the private use of our salesmen only." He thereupon handed me a typewritten paper covering about nine pages, and turning to the eighth page he called my attention particularly to the following: "The escapement on our machine is nothing "more than the escapement of the old No. 2 Rem-"ington machine," and, "The machine has now 345
"been fully explained and it remains with the "salesman to add such other interesting facts, the "connection of our Mr. Remington with this ma-"chine and the relation to the old Remington Stan-"dard; the fact that this is a second generation of "typewriter builders and that the same standard "excellence is being maintained in the manufacture "of this machine as all other goods which have "been produced by the Remingtons." He told me, this circular letter of private instruction to salesmen was issued from the office of the Remington-Sholes Company in Chicago and sent by that company to

346 the Howe Scale Company for the use of its salesmen, and for their information in offering Remington Sholes machines to the general public. He told me, I might read the letter over, but that I must return it to him, as it was not supposed to pass out of his possession. I told him, I would return it to him as soon as I had finished with it. He then left me to go to Philadelphia and get a machine. He returned in about an hour on a truck having a machine with him. The machine was brought into the hotel, and we continued our conversation for perhaps a half an hour. I paid him for the machine $62.50, less two and a half per cent. cash discount, or $60.94 net. He rendered me an invoice bought of the
347 Howe Scale Company, Philadelphia, 1 No. 2 "Remington" Sholes Typewriter No. 3309, style Remington. The invoice was receipted by him in my presence as follows: "Howe Scale Company, Wilgus." He left me after the transaction was completed, and I brought the machine with me to New York. The stock number of the machine, as shown on the invoice and on the machine itself, is 3309.

27 Q. Is the machine that you purchased, at the time stated in your last answer, here present on the table, and if so, will you produce it to be marked for identification? A. The machine before me is the machine I purchased and which I referred to in my last answer and bears certain marks which I put on
348 it at the time I purchased it, as follows: On the cylinder of the machine my initials T. F. C., Sept. 16, 1898. On the top plate of the machine my initials T. F. C. are also to be found. All of these marks were made by me in pencil at the time of the purchase.

28 Q. Will you produce the receipted invoice which you received at the time of the purchase of the machine, also the typewritten statement headed "Facts to Bear in Mind," which you say you received from the agent at the time of the purchase of the machine, also the letter of date July 1[illegible], 1898, and any other letter, document or advertising media which you

received during any of these interviews with the agents of the Howe Scale Company of Philadelphia, at Camden or elsewhere? A. I herewith produce the receipted invoice referred to on which I noted on the upper left hand corner, "Recd. Sept. 16, 1898, T. F. C." This notation I made at the time the invoice was handed me. 349

Counsel for complainant offers in evidence the invoice produced and identified by the witness, and the same is filed in evidence and marked "Complainant's Exhibit Howe Scale Company's Invoice for Machine No. 3309 of Sept. 16, 1898."

A. (Continued.) I herewith produce the eight-page letter of instruction to salesman which I referred to, which I notice bears the title on the first page, "Facts to Bear in Mind." On the upper left hand corner in my handwriting is the following: "Sept. 16, 1898, T. F. C." I identify this document as the one which I received, as above referred to. 350

Said document is offered in evidence by complainant's counsel and is marked "Complainant's Exhibit Instructions to Agents by the Howe Scale Company."

A. (Continued.) I herewith produce the letter handed me by Mr. Romig, above referred to, which bears my initials on both pages "T. F. C.," and identify this as the letter received at that time. 351

Counsel for complainant offers in evidence the letter which has been produced and identified by the witness, and the same is filed in evidence and marked "Complainant's Exhibit Seddon-Romig Letter, July 19, 1898."

A. (Continued.) I herewith produce the catalogue of the Remington-Sholes machine, which was handed me by Mr. Wilgus during the conversations above referred to. It bears the imprint, on the inside page in two different places, of the Howe Scale

352 Company as sales agents, giving their address as 508 Market street, Philadelphia. On the top of the outside cover I made the following notation at the time in my own handwriting: "Sept. 16, 1898, T. F. C.," and I identify this catalogue as the one delivered to me as above stated.

The catalogue produced and identified by the witness is filed in evidence and marked "Complainant's Exhibit Remington-Sholes Company's Catalogue, Sept. 16, 1898."

A. (Continued.) I herewith produce the business card, handed me by Mr. Romig when he called on me at the hotel in Philadelphia. I identify this as the
353 card handed me by that gentleman at that time.

The business card produced and identified by the witness is filed in evidence and marked "Complainant's Exhibit Romig Card."

The typewriting machine which was purchased by the witness, and which was numbered 3309 is now offered in evidence by counsel for complainant, and the same is marked "Complainant's Exhibit Remington-Sholes Machine No. 3309."

29 Q. At the time of these interviews with the agents of the Howe Scale Company at Philadelphia
354 and Camden, as you have stated, did you then know where the office and business place of the Howe Scale Company was in Philadelphia? A. Yes, sir.

30 Q. How did you get into communication with that office for the purpose of holding these interviews with their agents and purchasing the Remington-Sholes typewriting machine which you have produced and which has been offered in evidence? A. I went to the public telephone in the Hotel Lafayette and looking in the telephone directory found that the telephone number of the Howe Scale Company was 3882. I called up this number and when the response came I recognized the voice at the other

end of the telephone as that of the bookkeeper of 355
the Howe Scale Company, with whom I am well acquainted.

31 Q. Did you know at the time of these interviews that the Howe Scale Company had business offices at the No. 508 Market street, Philadelphia, Pennsylvania? A. Yes, sir; I have been for years well acquainted with that fact and have visited that office many times and am personally acquainted with the manager and employees of that office.

32 Q. What knowledge or information have you as to the fact that Romig was connected with the typewriter department of the Howe Scale Company and came from the office of that company at the time of your interview with him at the Hotel La- 356
fayette or elsewhere in Philadelphia? A. When I asked after calling up the Howe Scale Company that a typewriter man be sent to the telephone, Mr. Romig's name was then mentioned. Mr. Romig brought back with him a letter which bore the signature of Mr. Seddon, the manager of the typewriter department of the Howe Scale Company's business in Philadelphia. I am familiar with Mr. Seddon's signature and handwriting, and believe the signature attached to said letter to be Mr. Seddon's. This, together with the fact that he came in response to my request to the Howe Scale Company, left no doubt in my mind that he was their duly authorized representative. I also knew from other 357
typewriter men in Philadelphia that a Mr. Romig was connected with the office of the Howe Scale Company in that city.

33 Q. When Romig came in response to your request over the telephone wire, to the Howe Scale Company, did he inform you or not that he had been sent by the Howe Scale Company to see you in response to your telephone message to said company? A. He did. He told me he called in response to my request that a representative of that company call at the hotel to talk with me about the sale of typewriting machines.

358 34 Q. Did the Camden man also inform you that he came to see you by direction of the Howe Scale Company? A. He did.

35 Q. For how many years have you been acquainted with and used typewriting machines? A. In the neighborhood of fifteen to seventeen years; I can't recall exactly whether it is nearer seventeen or fifteen.

36 Q. Have you been acquainted with machines heretofore manufactured by the Standard Typewriter Manufacturing Company, later known as the Remington Standard Typewriter Manufacturing Company, and of those manufactured by Wyckoff, Seamans & Benedict? A. Yes, sir; from the time
359 I was fifteen years old I have used and been entirely familiar with Remington machines.

37 Q. How have such machines generally been known and designated among users of typewriting machines and by purchasers thereof to your knowledge? A. I have never known them to have been called or designated by any other term or name than Remington machines; that is, Remington No. 2, or Remington No. 6; sometimes where a particular model was being referred to following the word Remington by the number of that model, but always by the term "Remington."

38 Q. Have you during the last few months been in charge of the typewriter office of Wyckoff, Sea-
360 mans & Benedict at Buffalo, New York, and if so, during what period? A. Yes, sir; I was manager of the Buffalo and Rochester offices of Wyckoff, Seamans & Benedict from about October 22, 1898, up to the end of January, 1899.

39 Q. While there in charge of either of those offices did you make any examination among the application slips or papers made by persons who were seeking employment as operators? A. Yes, sir.

40 Q. For what purpose did you make such examination of such applications? A. For the purpose of ascertaining what term was generally used by pro-

fessional operators in referring to machines manu- 361
factured by Wyckoff, Seamans & Benedict.

41 Q. Now state briefly first, whether you have those original applications here with you and can produce them, and state what the character of those applications are and what the result is of your investigation as to the name by which the machines manufactured and sold by Wyckoff, Seamans & Benedict are designated in said applications? A. Yes, sir; I have those applications in my hand and herewith produce them. After a careful examination of the applications received during 1897 and 1898, I find that out of a total number of one hundred and sixty-five applications for positions filled up in the handwriting of professional operators of 362
typewriting machines where the question is asked in the application blank, "What machines do you use?" one hundred and fifty three out of the one hundred and sixty-five use the word "Remington." Ten of said applicants out of the whole number of one hundred and sixty-five use the abbreviation "Rem," two of said application blanks do not show what machine the applicants use.

All the application blanks which have been produced and identified by the witness are put in evidence by complainant's counsel and marked "Complainant's Exhibit Application Blanks 1 to 165," inclusive.

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42 Q. Do you know whether similar blanks are used by Wyckoff, Seamans & Benedict in their New York office and in other offices where their machines are sold or used, and if so, state briefly what you know on that subject? A. Blanks of a similar nature are used in all the offices of the Remington typewriter throughout the world.

43 Q. If you have any other advertising media, which you have gathered together, showing the use of the name Remington in connection with the business of Wyckoff, Seamans & Benedict or its predecessors, will you now produce it and state what it is?

364 A. I took from our letter files a few of the bound volumes of old letters, and from an examination of the letters received from those whose names commence with the letter "A" during January and February, 1884, I find that among said letters there are fifteen referring to the machine by its name. In each instance it is referred to as "Remington." August to January, 1887, the same letter of the alphabet contained twenty letters of the same description. February 18th to 28th, 1883, letters M and N of the alphabet contained forty-one letters of a similar description. December 1st to February 1, 1891 and 1892, letter A of the alphabet contained fourteen letters of a similar nature. Let-
365 ters received during October, 1890, under the letter A contained twenty-two letters of a similar description; letters received January 1st to February 15, 1895, letter A of the alphabet, contained twenty letters of a similar description. These letters I herewith produce. I also herewith produce the printed price list of Messrs. Thorp & Martin Company, of 12 Milk Street, Boston, manufacturers of parts for various makes of typewriters. Throughout this price list of parts where parts for machines manufactured by Wyckoff, Seamans & Benedict are referred to, I find that in every instance they are referred to as "Remington." I herewith produce a price list of second-hand typewriting machines pub-
366 lished by E. N. Miner, proprietor of a large second-hand typewriting machine establishment called "Typewriter Headquarters." Upon examination I find that in this price list in every instance where the machines manufactured and sold by Messrs. Wyckoff, Seamans & Benedict are referred to they are called "Remington." I herewith produce a letter received by myself from F. S. Webster Company, an institution manufacturing typewriter ribbons and parts for typewriters, and in their letter they call my attention to an article in their catalogue in reference to the typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict in the following

manner: "beg to call your attentionto the reference 367
to the 'Remington' typewriter appearing on pages 97-105." I also produce the catalogue which contains over fifty references to the machine manufactured by Wyckoff, Seamans & Benedict as "Remington." I also herewith produce an original letter written by the London dealers in the Remington typewriter, under date of February 12, 1884, on the top of which letterhead is printed or engraved "Remington Typewriter Depot, 6 King Street, Cheapside, London, E. C." I also herewith produce a list and prices of typewriter parts published by E. E. Bushnell, 171 Broadway, New York, and on examination find that in every instance where the machines man- 368
ufactured by Wyckoff, Seamans & Benedict are spoken of they are referred to as "Remington" typewriters. I also herewith produce a catalogue issued by Jesse Alexander, a manufacturer of a word register to be attached to typewriting machines and find that in said catalogue where the machines manufactured and sold by Wyckoff, Seamans & Benedict are spoken of and illustrated, they are referred to as "Remington."

Adjourned to Friday, February 24, 1899, at 10 A. M., at the same place.

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NEW YORK, February 24, 1900.
10 A. M.

Met pursuant to adjournment.

Present—Counsel as before.

DIRECT-EXAMINATION of THOMAS F. CREAN continued:

(A. to Q. 43 continued.) I also herewith produce an official specification of the Quartermaster's Department of the United States Army, dated New

York City, October 21, 1898, calling for sealed proposals for certain goods required by the Quartermaster's Department. On the fourth page of said proposal, under the head Typewriter Supplies, I find the following: "45 Remington Typewriters, No. 7, with all latest improvements." From my own knowledge, I know that the Army Department, when asking for proposals for the typewriting machines manufactured by Wyckoff, Seamans & Benedict, in every instance refer to them as "Remington" typewriters. I find on the same page the following item: "144 ribbons, typewriter, for Remington machine, official, indelible, copying, purple." I also herewith produce one hundred letters of application received from stenographers in response to an advertisement, for a stenographer and typewriter, which advertisment was inserted on the 30th day of December, 1898, in the *New York Herald*, the *New York World* and the *New York Journal*, newspapers published in the City of New York. I have examined all of these one hundred letters and find that in ninety of them where the applicant makes known the make of typewriting machine, which he or she is familiar with, the word "Remington" is the only word used in referring to the typewriting machines manufactured by Wyckoff, Seamans & Benedict, and the balance of said letters, that is, ten of them, refer to said machines manufactured by Wyckoff, Seamans & Benedict as "Rem." I also herewith produce ten daily newspapers published in the City of Buffalo, New York, during the month of December, 1898, in which appear advertisements of stenographers applying for positions or advertisements of those desiring to employ stenographers, and after examination I find that in every instance where the typewriting machine manufactured by Wyckoff, Seamans & Benedict is referred to it is called the "Remington" machine, or "Remington" typewriter. I also herewith produce sixty-six letters received at the New York office of Wyckoff, Seamans & Benedict during December, 1898, and Janu-

ary, 1899, which letters were taken out of the "A" and "B" letter files in the office of said Wckoff, Seamans & Benedict, and I find that in every instance where the machine manufactured by Wyckoff, Seamans & Benedict is referred to it is called the "Remington" typewriter, and I also find that in many cases said letters instead of being addressed to Wyckoff, Seamans & Benedict are addressed "Remington Typewriter Company." 373

Counsel for complainant offers in evidence the letters referred to by the witness in his last answer, being bound volumes of old letters designated "A," "M" and "N," and the same are filed in evidence and marked "Complainant's Exhibit Letters 'A,' 'M' and 'N.'" 374

Complainant's counsel next offers in evidence the price list of Thorp & Martin Company, of 12 Milk street, Boston, and the same is filed and marked "Complainant's Exhibit Thorp & Martin Price List."

Complainant's counsel next offers in evidence price list of E N. Miner, and the same is filed in evidence and marked "Complainant's Exhibit Miner Price List."

Complainant's counsel next offers in evidence letter and catalogue of F. S. Webster Company, and the same are filed in evidence and marked "Complainant's Exhibit Webster Company Letter and Catalogue." 375

Complainant's counsel next offers in evidence letter by London dealers in Remington typewriter, dated February 12, 1884, and the same is filed in evidence and marked "Complainant's Exhibit London Letter, Feb. 12, 1884."

Complainant's counsel next offers in evidence a list and prices of typewriter parts published by E. E. Bushnell, and the same is filed in evidence and marked "Complainant's Exhibit Bushnell Price List."

Complainant's counsel next offers in evidence catalogue of Jesse Alexander, and the same is

376 filed in evidence and marked "Complainant's Exhibit Jesse Alexander Catalogue."

Complainant's counsel next offers in evidence specification of Quartermaster's Department of the United States Army of October, 1898, and the same is filed in evidence and marked "Complainant's Exhibit U. S. Quartermaster's Department Specification."

Complainant's counsel next offers in evidence one hundred letters of applications received from stenographers in response to advertisements, &c., and the same are filed in evidence and marked "Complainant's Exhibit Letters from Stenographer No. 1 to 100," inclusive.

377 Complainant's counsel next offers in evidence sundry Buffalo newspapers, produced by the witness, which contain advertisements of stenographers for positions, &c., and the said advertisements, in said several newspapers, are filed in evidence and marked "Complainant's Exhibit Buffalo Newpaper Advertisements."

Complainant's counsel also offers in evidence sixty-six letters taken from "A" and "B" files of Wyckoff, Seamans & Benedict, and the same are filed in evidence and marked "Complainant's Exhibit A and B Letters, December, 1898, and January, 1899, Nos. 1 to 66," inclusive.

378 (A. continued.) In the New York office of Wyckoff, Seamans & Benedict, it is and has been the custom for eighteen or twenty years to file all the letters received from all sources in a letter file, having a separate box for each letter of the alphabet; that is, all letters received from persons, firms or corporations, whose names commenced with the letter "A," are placed in the "A" box or file, and so on throughout the whole alphabet. As these boxes become filled up, the letters they contain are taken from them and are bound together in what is known as the office specialty transfer cases, said cases being numbered consecutively from 1 up, and each marked

with the letter of the alphabet showing from what 379
particular file the letters were taken, and also showing from what date and up to what date the letters contained in each of said files were received. The letters which I have produced in connection with my testimony in this case I took from the files referred to and know of my own knowledge that they are all original letters received in the usual course of business at the New York office of Wyckoff, Seamans & Benedict.

The catalogues and price lists of manufacturers of typewriters parts and dealers in second-hand machines, &c., which I have produced are all original price lists, or catalogues, as issued by said manufacturers from time to time and circulated by them 380
throughout the typewriter trade all over the country.

The official specification from the Quartermaster's Department of the United States Army was received by Wyckoff, Seamans & Benedict from said Quartermaster's Department, in the usual course of business, and I know is an original document.

The sixty-six letters, above referred to, were received in the usual course of business by Wyckoff, Seamans & Benedict, and to my own knowledge are all original letters.

The one hundred letters of applications from stenographers, applying for positions, I also know of my own knowledge are the original letters re- 381
ceived from such applicants.

The ten newspapers published in the City of Buffalo, I purchased myself in that city at the office where such papers are published and know of my own knowledge they are regularly issued copies.

The one hundred and sixty-five application blanks from stenographers taken from the Buffalo office of Wyckoff, Seamans & Benedict, I took personally from the records in that office, of which records I, at that time, had personal charge, and I know they are the original applications.

The letter of the London agents of the Remington

382 typewriter, dated February 12th, 1884, I took from the original letter files in the office of Wyckoff, Seamans & Benedict in New York City. It is one of a great many letters written on a similarly printed or engraved letter-head on file on said office.

CROSS-EXAMINED by Mr. Fisher:

44 x-Q. How long have you been in the employ of Wyckoff, Seamans & Benedict? A. About fourteen months?

45 x-Q. By whom were you employed before that? A. Just before that the Gold Creek Mining Company, and previous to that time I had been president of a corporation known as the Eclipse Electric
383 Lamp Company, previous to which I had been employed by the New York sales agents of the Howe Scale Company, Messrs. Page, Dennis & Company.

46 x-Q. How many places did you visit for the purpose of obtaining evidence to be used in this cause besides the cities which you have named in your direct-examination? A. Those were the only cities visited by me for that purpose.

47 x-Q. When you visited Clement & Clement in Montreal, by what name did you introduce yourself? A. I don't recall. I did not represent that I wanted a machine myself and suggested I called at the request of others to look at a Remington machine. For that reason I don't recall that they asked me my
384 name.

48 x-Q. Did you not mention some name when you talked with Mr. Clement? A. No, sir.

49 x-Q. You are positive on this point, are you? A. I am.

50 x-Q. You did not state to Mr. Clement the true object of your visit, of course? A. Certainly not.

51 x-Q. And you knew where the Montreal office of the Remington standard machine was before you made the inquiry, did you not? A. Yes, sir; very well.

52 x-Q. If I understand you correctly, your sole purpose in visiting Mr. Clement was to obtain evi-

dence for use in this case, was it not? A. I had no 385
knowledge at that time that any suit was contemplated. I was in Montreal on other business and complaints having been made by our representatives there that Remington-Sholes machines were being sold or offered for sale as Remington machines, it occurred to me that I had better investigate and find out what, if any, truth such statements contained.

Counsel for defendant objects to the answer as not responsive to the question.

53 x Q. When you visited Baltimore by what name did you introduce yourself to Mr. J. T. Gillelan? A. To the best of my recollection, I did not 386
use any name on the occasion of my visit to the Baltimore office of the Howe-Scale Company's representative.

54 x-Q. What did you state to Mr. Gillelan as the object of your visit? A. A Mr. Johnson, to whom I referred in my direct-examination, an official reporter in the House of Representatives at Washington, had advised me an improved Remington machine was being handled by the Tribune Cycle Company. I repeated to Mr. Gillelan what Mr. Johnson had said to me covering this point, and asked Mr. Gillelan if I was in the right place. He told me I was, and assented to what Mr. Johnson had told me. Following this the general conversa- 387
tion to which I have already referred took place.

55 x-Q. Why did you take Mr. Roger E. Lewis with you to Mr. Gillelan's office? A. I felt that if the Tribune Cycle Company were making the statement in relation to the Remington-Sholes machine which Mr. Johnson advised me they were making, that it would be well for me to have some one present to hear the conversation and know just what was said.

56 x-Q. When you visited Washington and had your conversation with Mr. F. L. Sholes, by what name did you introduce yourself. A. I don't recall

388 that Mr. Sholes asked my name, and, to the best of my recollection, I cannot recall having given any name.

57 x-Q. Did you give any name during either of your visits to the Washington office of the Remington-Sholes Company? A. No, sir; I do not recall that I did on either occasion.

58 x-Q. Why did you take Miss Danaher with you, when you visited the Washington office of the Remington-Sholes Company? A. For the same reason that I took Mr. Lewis with me when I called at the office of the Tribune Cycle Company in Baltimore.

59 x-Q. When you visited Philadelphia in July, 1898, as testified in your direct answer to question
389 26, by what name did you introduce yourself, or what name did you give in talking with the parties with whom you had conversation regarding the Rem-Sho. machine? A. James A. Hood, Baltimore.

60 x-Q. What did you state to be the object of your visit at that time? A. I handed Mr. Romig a letter, which I had previously written, which letter asked for information in relation to typewriting machines, and asked Mr. Romig if he would not be good enough to give me the information asked for by that letter.

61 x-Q. By whom was that letter signed or with what name? A. The letter was signed by myself
390 with the name Brooks & Company.

62 x-Q. Where was that letter written? A. It was written by me in Philadelphia.

63 x-Q. Is there any such concern as Brooks & Company? A. There are probably many such concerns, but, in signing the letter, I had no firm of that name in mind particularly.

64 x-Q. What kind of letter heading, if any, appeared upon the paper on which such letter was written? A. The name Brooks & Company was printed on the upper left hand corner of the letter.

65 x-Q. Was any address given? I mean was

there any address printed as part of the letter head- 391
ing? A. Yes, sir; the address Jamaica, B. W. I.

66 x-Q. Where did you obtain the letter sheet on which that letter was written by you? A. I had it printed in a printing office in the neighborhood of the Lafayette Hotel, a few months previously.

67 x-Q. Did you see Mr. Seddon during either of your visits to Philadelphia? A. No, sir; I did not.

68 x-Q. Did you talk with any one in regard to the Rem-Sho machines during your July visit to Philadelphia besides Mr. Romig? A. I visited the Philadelphia office of the Remington typewriter and talked there with the manager of the office and some of the salesmen.

69 x-Q. I mean, did you talk with any one con- 392
nected with the Howe Scale Company with regard to the Remington-Sholes typewriter besides Mr. Romig? A. With the bookkeeper over the telephone, who sent Mr. Romig to the telephone to talk with me before he started for the Hotel Lafayette. This was the only person, other than Mr. Romig, connected with the Howe Scale Company, I talked with during that visit.

70 x-Q. During your July visit to Philadelphia did you offer to buy a Remington-Sholes machine? A. I did not.

71 x-Q. Did you tell Mr. Romig, during the July visit, that you desired a machine shipped to you in New York City? A. Not on July 19th, the day I 393
saw him at the Hotel Lafayette. I think, within a few days thereafter, I wrote him and told him in my letter that he might prepare a machine for which I would give him shipping instructions later on.

72 x-Q. Upon what kind of letter paper was such letter written and with what name was it signed? A. If I recall correctly, it was written on a letter sheet which had no printed heading. It was signed by me J. A. Hood or James A. Hood; I cannot now recall whether the name "James" was spelled out or simply the initials "J. A."

73 x-Q. Do you remember to have written to any

394 one connected with the Howe Scale Company upon the bottom of the Brooks letter to which you have referred in your answers to x Qs. 59 to 66? A. I remember sending a second letter written on the Brooks letter-head to Mr. Romig, or to the Howe Scale Company, on which I had written a memorandum on the foot. I do not recall just the date such letter was sent, but believe it was in a week from the date of my conversation with Mr. Romig.

74 x-Q. Was the second letter also signed by Brooks & Company, and was the note or letter addressed to the Howe Scale Company, or Mr. Romig, written across the bottom of that second letter and signed by James A. Hood? A. The name Brooks
395 & Company was signed by myself; the name James A. Hood and the footnote on the bottom of that second letter, addressed as indicated, was signed and written by a young lady.

75 Q. Was the body of that second Brooks letter written by you? A. Yes, sir.

76 x-Q. And such letter was on a sheet having the name "Brooks & Company," and the address "Jamaica" thereon, such sheet being one of those that you had caused to be printed? A. Yes, sir; that is exactly the case.

77 x-Q. Is there such a firm as Brooks & Company engaged in business at Jamaica? A. Not that I know of.

396 78 x-Q. When were you next in Philadelphia after July 19th, 1898? A. September 16th was the date of my second visit in connection with the Remington-Sholes machine. I may have been there on other business between July 19th and September 16th, but cannot recall now that I was.

79 x-Q. You are positive that you were not there on July 29th, 1898, are you? A. I cannot recall that I was. I have occasion frequently to visit between New York and Baltimore and Washington, and it is my custom sometimes to stop off at Philadelphia

to visit the Philadelphia office of the Remington typewriter. 397

80 x-Q. Did you indicate to Mr. Romig, or to any one else, how you desired to have the bill or invoice read for the machine that you purchased from the Howe Scale Company? A. In my original conversation with Mr. Romig, when I intimated I might be able to do some business with him in the sale of typewriters for the Island of Jamaica, or elsewhere, and indicated that the only machine known to any extent there was the Remington machine, he told me that that was very well, and if I desired he could invoice the machines to me as Remington machines. In the second letter on the letter head Brooks & Company I asked Mr. Romig to invoice the machines 398 in the manner in which he voluntarily suggested he would.

81 x-Q. Did you ever receive any other bill or invoice for a Rem-Sho typewriter besides the one dated September 16th, 1898? A. Yes, sir, I received an invoice a few weeks previous to September 16th, for a machine, which invoice was made out in about the same manner as the invoice which I produced yesterday; that is, it refers to the machine as follows: "1 Remington-Sholes Typewriter No. 2993 'of the style Remington.'"

82 x-Q. Where did you receive this invoice that is dated July 29, 1898? A. It was mailed to the Astor House, New York, addressed to J. A. Hood, Esq. 399

83 x-Q. Was the invoice dated September 16, 1898, and covering Remington-Sholes typewriter No. 3309, delivered to you in person, and if so, by whom? A. Yes, sir; it was handed to me by Mr. Wilgus.

84 x-Q. Was the invoice written in your presence? A. No, sir; the invoice when handed to me was complete, and Mr. Wilgus, upon my paying him the amount of the bill, added the words, "Recd. Payment 9/16/98, Howe Scale Co., Wilgus."

85 x-Q. You are positive, are you, that the words "Style Remington" were upon this invoice when Mr. Wilgus brought it to you? A. Absolutely so.

400 AFTER RECESS, 2 P. M.

86 x-Q. After you sent the second Brooks letter, mentioned in your answer to x-Q. 73, to Mr. Romig or the Howe Scale Company, you made various efforts to recover possession of such letter, did you not? A. No, sir, I don't recall that I did. I believe I noted on the letter a request that it be returned after it was read.

87 x-Q. Did you not call at the office of the Howe Scale Company, or at the office of the Rem-Sho Typewriter Company at Philadelphia, and request that that letter be returned to you? A. Positively not. I have not been in the Philadelphia office of
401 the Howe Scale Company at any time during the past two years.

88 x-Q. Have you ever requested Mr. Seddon to return to you either of the Brooks letters? A. They never had but one of the Brooks letters; that is, the first letter they never had in their possession. The second letter I sent them, as already indicated, and the only request that I recall having made for its return was the foot note on the letter the time it was sent.

89 x-Q. All the machines that you saw in the various offices of the Rem-Sho typewriter, visited by you, were like the exhibit machine introduced in evidence, were they not? A. Yes, in a general way.
402 I believe I recall having seen some Remington-Sholes machines with a style of scale not exactly like the one delivered to me by the Howe Scale Company's representative at the hotel in Camden. There were other slight changes in some of the machines of this make which I saw at the various salesrooms visited by me.

90 x-Q. But all the machines were marked plainly with the words "Remington-Sholes Company, Mfrs., Chicago," were they not, so far as you observed? A. I did not notice particularly in all cases, but believe they were so marked.

91 x-Q. Referring to the application blanks that 403
have been introduced in evidence, I ask you to state whether it is not a fact that you find the names of other typewriting machines abbreviated, as "Smith," and "Sm. P." for Smith-Premier, and "Calig." for caligraph? A. The abbreviation "Calig." is very frequently used to designate the machine manufactured by The American Writing Machine Company, which is called the Caligraph, or New Century Caligraph, in about the same manner as the abbreviation "Rem." is very frequently used to designate the machine manufactured by Wyckoff, Seamans & Benedict, which machine is universally known as the Remington machine. In the same manner the word "Smith" is frequently used to 404
designate the machine manufactured by the Smith-Premier Typewriter Company, known as the Smith or Smith Premier. The Smith-Premier machine, I believe, is as frequently called Smith as it is called the Smith-Premier, as these application blanks will indicate.

92 x-Q. But in speaking of the Caligraph and of the Remington Standard machine, these names are spoken in full and not as abbreviations, are they not? A. I don't recall ever having heard any one in conversation speak of the machine manufactured by Wyckoff, Seamans & Benedict as the Remington Standard. In speaking of this machine the word "Standard" is never used. In all my experience of 405
seventeen years, I have never known it to be called, or known, by any other name than the Remington. The abbreviation of the word "Caligraph" is never used to my knowledge in conversation or when the caligraph machine is spoken of. The abbreviation of the word "Caligraph" is very frequently used when the machine is being referred to in writing. This would hardly apply to the use of the abbreviation Rem. for Remington, the abbreviation Rem. being a complete term or syllable in itself, which is not the same with the abbreviation used for the caligraph machine.

406 93 x Q. Referring to the various advertisements in the Buffalo papers introduced in evidence, please state whether or not you caused any of those advertisements to be published? A. Positively no.

REDIRECT-EXAMINATION by Mr. Donnelly:

94 RD-Q. I understood you to state a few moments ago during the cross examination that you had heard the Remington machine referred to or spoken of as the "Rem." machine; is that a fact? A. Yes, sir; I have frequently heard operators of typewriters referred to as Rem. operators, meaning that they were operators of the Remington machine.

407 95 RD-Q. When you say the Remington machine in your last answer, what makers do you refer to? A. When I speak of the Remington machine I mean always the machine manufactured by Wyckoff, Seamans & Benedict, and during my experience as an operator of typewriting machines it was the name by which that machine was always known, and there was no other typewriting machine so designated that I have ever known of.

96 RD-Q. I show you a Howe Scale Company invoice dated July 29th, 1898, addressed to James A. Hood, Astor House, New York. Did you receive the invoice shown you, and if so, when did you receive it, and is it now in the same condition, so far

408 as the writing is concerned, &c., as when you received it? A. Yes, sir; I received the invoice, which you just handed me, at the Astor House, in this city, on July 30th, 1898, and it is in exactly the shape in which I found it when I opened the envelope which it came to New York in, with the exception of the pencil memorandum, as follows: "2 1/2 cash, $\frac{1.56,"}{60.94}$ which pencil memorandum I made on the invoice during the conversation with Mr. Wilgus at the hotel in Camden, which conversation is referred to in the cross-examination. The memorandum in ink, near the upper left-hand corner, as follows:

"July 30/98, T. F. C.," I made on the invoice at 409
the Astor House as soon as I opened the envelope
which it came to New York in.

The invoice which has just been shown to and identified by the witness is offered in evidence, and marked "Complainant's Exhibit Howe Scale Company Invoice, July 29, 1898."

RECROSS EXAMINATION:

97 Re-x-Q. Among the application blanks introduced in evidence, in the course of your examination, there is one in the name of William Meuser, under date of July 26, 1898, and upon the upper left-hand corner of this blank I find the following pencil memorandum: "Why don't we own the word 'Rem' too? Crean." Did you make that memorandum? A. As the result of my investigation—— 410

98 Re-x-Q. (interrupting witness): I did not ask you for the result of any investigation but simply to state whether you made that memorandum or not? A. Yes, sir.

REDIRECT-EXAMINATION:

99 RD-Q. Now, Mr. Crean, you may state the circumstances under which you made that memorandum on the blank referred to by counsel in his last recross question? A. Knowing, as I do, from my experience of seventeen years as an operator, and one familiar with typewriting machines, and as a result of my investigations of the business methods of the dealers in the Remington-Sholes machine, I considered that the use of the abbreviation Rem. in connection with that machine was likely to mislead, and to my own knowledge had misled prospective buyers of machines in many instances, and for that reason, when sending these application blanks from the Buffalo office of Wyckoff, Seamans & Benedict to the office of Mr. H. D. Donnelly in New York, I made the notation referred to on the upper left-hand corner of the application blank referred to in order 411

412 to call Mr. Donnelly's attention to the fact that in a great many instances the abbreviation "Rem." was used by professional typewriter operators to indicate that by that abbreviation they referred to and were users of the Remington machine made by Wyckoff, Seamans & Benedict.

RE-RECROSS-EXAMINATION:

100 Re-re-x-Q. Please state specifically each and every one of the instances in which, to your own knowledge, prospective buyers of machines have been deceived, misled by the use of the word "Rem-Sho" into buying the Remington-Sholes machine as
413 and for the machine of complainant's manufacture. In answering this question, you will please confine yourself to matters not of hearsay but of within your own personal knowledge, and you will please give the names and addresses of the parties to whom you may refer? A. I did not say that I knew of my own knowledge of instances where the Remington-Sholes machines had actually been purchased because of the use of the abbreviation Rem.

101 Re re-x-Q. Then, if I understand you correctly, you do not, of your own knowledge, know of any such instances? A. As I said, I referred to instances where prospective buyers had been misled because of such use of the word Remington or the abbreviation Rem., but I do not know of any instances from
414 my own knowledge where sales actually occurred. In the instances referred to, machines were taken on trial or ordered for trial, but before the time of purchase the prospective buyers happened to learn that it was not a Remington machine and the trial machines were returned, or the order for trial machines canceled.

102 Re-re-x-Q. Please give me the names and addresses of the prospective purchasers referred to in your last answer? A. A Mr. Johnson, an official reporter in the House of Representatives at Washington, a user of Remington machines for twenty

years, was so far misled by the use of the word 415
"Remington," or the abbreviation "Rem." and by the false statements made to him by the Baltimore sales agents of the Remington-Sholes machine, to the effect that it was a Remington machine, that it was invented and was being manufactured by the former manufacturers of the Remington machine, that he was induced to place a trial order with them. I happened to meet Mr. Johnson during one of my visits to Washington, and when I advised him the true facts in relation to the Remington-Sholes machine he immediately canceled the order for the trial machine, which he told me he had intended to buy if it proved satisfactory on trial. Mr. Johnson told me that the only reason he was attracted to the 416
machine at first was because of the use of the word "Remington" in connection with the name of the machine. He also told me that after having looked the Remington-Sholes machine over, notwithstanding his use of the Remington machine for twenty years, that he was completely misled and deceived because of such use of the word Remington. Another instance, I have in mind, is a Mr. Downs, the general manager of the large manufacturing institution known as Peck Brothers Company in New Haven, Conn. Mr. Downs told me that he ran across a catalogue of the Rem-Sho machine and, because of the use of the word "Remington," supposed the machine it referred to was a Remington machine. Peck 417
Brothers Company are very large users of Remington machines, and when they are needing new typewriting machines Mr. Downs, as their general manager, is the individual who places the orders for such machines. Mr. Downs told me that he never questioned for a moment but that he was getting a Remington machine. After having the machine in use for a short period he discovered that it was not a Remington machine through information given him by one of his various operators of typewriting machines, and when this was made clear to him he returned the Remington-Sholes machine. These

418 two cases I happen to know of of my own knowledge.

Counsel for defendant objects to the answer to the last question as irresponsive to the question and as hearsay.

(Signed) THOS. F. CREAN.

Adjourned to meet at the convenience of counsel for both parties.

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NEW YORK, April 27, 1899,
419 11 A. M.

Met pursuant to adjournment.

Present—Counsel as before.

JOSEPH E. PLATT, called as a witness on behalf of the complainant, being duly sworn, testifies as follows:

By Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Joseph E. Platt; residence, Milford, Conn.; age, fifty-two; occupation, selling typewriters.

420 2 Q. Are you engaged in any other business than selling typewriters, and if so, will you please state what it is? A. No other; typewriters and supplies.

3 Q. How long have you been engaged in the sale of typewriters and supplies? A. Eleven years next June.

4 Q. Where have you carried on that business? A. Room 42 Insurance Building, 810 Chapel street, and at present 27 Centre street, New Haven, Conn.

5 Q. In carrying on your business of selling typewriters and supplies, have you confined your efforts or operations to the City of New Haven, or have you sold or offered for sale typewriters and type-

writer supplies in other parts of the State of Con- 421
necticut? A. The State of Connecticut.

6 Q. Have you ever at any time been engaged in the sale of the typewriting machines which are manufactured now by Wyckoff, Seamans & Benedict and sold by said corporation? A. About ten years.

7 Q. During what years did you sell the typewriting machines which are now manufactured by Wyckoff, Seamans & Benedict and were formerly manufactured by their predecessors? A. 1888 to 1898.

8 Q. Where did you sell such machines, if you did sell them? A. To individuals and corporations.

9 Q. In what State or locality or city? A. State of 422
Connecticut, in every town of importance.

10 Q How were the typewriting machines which you sold in the State of Connecticut for Wyckoff, Seamans & Benedict, during the time you have mentioned in previous answers, known or designated, that is to say, by what name were they known or spoken of in New Haven or in the State of Connecticut, where you sold them? A. Remington typewriter.

11 Q. Prior to the year 1894, to what extent was the Remington typewriter known in New Haven and in the State of Connecticut among purchasers and users of typewriting machines? A. It was generally understood as the leading machine.

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12 Q. Have you ever known or heard of a machine which is called the Remington-Sholes typewriter, or the Rem-Sho typewriter? A. I have.

13 Q. About when, as nearly as you remember, did you first learn that there was such a typewriting machine in the market in this country? A. The latter part of 1897 or early in 1898.

14 Q. Prior to the time when you learned that there was a machine in the market called the Remington-Sholes typewriter, or the Rem-Sho typewriter, had you ever known or learned of any typewriting machine bearing the name Remington or sold under

424 the name of Remington, or under any name of which the name Remington formed a part, except the typewriting machine which you had sold for Wyckoff, Seamans & Benedict? A. No, sir.

15 Q. Prior to the year 1894 was or was not the so-called Remington typewriter widely and favorably known in the City of New Haven and in the State of Connecticut? A. It was.

16 Q. Have you ever been an agent for the sale of the so called Remington-Sholes typewriter, or Rem-Sho typewriter? A. I was about one year.

17 Q. Kindly state when that was, that is to say, when you began the sale of the so-called Remington-Sholes typewriting machine, and when you ceased
425 to sell the same? A. The latter part of 1897 to the latter part of 1898.

18 Q. Where did you carry on the business of selling the so-called Remington-Sholes typewriter? A. In New Haven and surrounding towns.

19 Q. Did you obtain the agency for the sale of the Remington-Sholes, or Rem-Sho typewriter, from any person, firm or concern, and if so, from whom? A. From Mr. Franklin Remington.

20 Q. Mr. Franklin Remington, of Chicago? A. I suppose so.

21 Q. Did he visit you at New Haven before or at the time you took the agency? Where did you first come into communication with him? A. No, sir; I
426 met him on Broadway at the office of Page, Dennis & Co. I made an agreement for the agency with Mr. Franklin Remington, but received the contract from Page, Dennis & Company, to whom I paid all bills for typewriting machines.

22 Q. State who Page, Dennis & Co. are, and what their connection or relation to the Howe Scale Company or to the so-called Remington-Sholes Company is, if you know? A. As I understand it, Page, Dennis & Company are selling agents for the Howe Scale Company in New York City, and also handle the Rem-Sho typewriters.

23 Q. Did you make any written contract with

anybody at the time you obtained the agency for the 427
so called Remington-Sholes typewriter, and if so, with whom was such written contract made? A. I made a contract for one year with Page, Dennis & Company, said contract to remain in force for one year unless terminated by mutual consent.

24 Q. From whom did you receive the so-called Rem-Sho typrewriting machines; were they received from Page, Dennis & Co. or were they sent you from some other source? A. Usually from Page, Dennis & Company; sometimes a special machine from Chicago.

25 Q. Did you sell these machines on commission, or how, and to whom did you pay the proceeds from sales, if to anybody. A. I purchased the ma- 428
chines outright at a certain price, and my remittances were made to Page, Dennis & Co.

26 Q. During the time you acted as agent for the sale of the so-called Remington-Sholes machines at New Haven, and in the State of Connecticut, did you keep such machines on hand for exhibition in your store and office? A. Yes, sir.

27. Q. Did you keep on hand any advertising matter, and if so, what was the nature or character of it? A. Illustrated catalogues and folders, &c,

28 Q. Who furnished you, if anybody, with the advertising matter consisting of catalogues, &c.? A. Page, Dennis & Company.

29 Q. What, if anything, did you do in the way 429
of exhibiting the so-called Remington-Sholes machine and bringing it to the attention of the public in New Haven and in the State of Connecticut during the time that you sold that machine, as you have heretofore testified? A. I had machines on sale in the store, on exhibition in the show-window, and also advertised in the local paper, the New Haven *Evening Leader*.

30 Q. Did anybody call at your store or office to examine said machine, and did you come in contact with the public more or less in your efforts to sell

430 that machine? I mean the so-called Remington-Sholes typewriter? A. I did.

31 Q. During the time that you exhibited the so-called Remington-Sholes machine and advertised it for sale and offered it for sale, was any inquiry ever made of you concerning the origin of that machine, or as to what concern manufactured it and put it upon the market, and if so, please state what you know in that regard?

Counsel for defendant objects to the question as incompetent, immaterial and irrelevant, and as calling for matter having no bearing upon the questions at issuse between the parties to this litigation.

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A. There was considerable inquiry made and required careful explanation.

32 Q. Will you please state briefly the inquiry made of you as to what concern manufactured and put that machine upon the market which required careful explanation?

Same objection.

A. People called at my office frequently and asked if that machine was an improved Remington machine, and if it was not manufactured by Wyckoff, Seamans & Benedict, and it required considerable explanation to convince them that Wyckoff, Seamans & Benedict was not the inventors of that machine, and had not placed it on the market to take the place of the Remington typewriter.

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33 Q. To what extent did you find in your experience in the sale of the so-called Remington-Sholes machine that the public were under the impression or labored under the idea that the so-called Remington-Sholes machine was manufactured and put upon the market by Wyckoff, Seamans & Benedict? A. I found it the prevalent opinion of my patrons and the public generally.

34 Q. Did you experience any difficulty in removing that idea from the minds of persons with whom

you came in contact by or through your explana- 433
tions to them? A. I did.

35 Q. And did you experience this difficulty notwithstanding the fact that you had circulated advertisements, &c., in explanation of the origin of this so-called Remington-Sholes machine? A. It did not seem to make any difference.

36 Q. To what did you, or do you now, attribute the impression or idea in the mind of the public that the so-called Remington-Sholes machine was a product of Wyckoff, Seamans & Benedict, and put upon the market by that concern?

Counsel for defendant objects to the question, as it is manifestly immaterial what witness' 434
conclusion may be as to this matter.

A. I attributed it to the fact that the people generally believed it had some connection with the Remington typewriter, and was in some way controlled or operated by them.

37 Q. Did you attribute that impression or idea which was lodged in the mind of the public which you came in contact with as in any way due to the use of any name, and if so, what?

Same objection.

A. I attributed it to the fact that they used the name Remington prominently. 435

38 Q. From your observation and experience in the sale of the so-called Remington-Sholes typewriter and the offering it for sale and sale under the name Remington-Sholes or Rem-Sho, what do you say as to the tendency of said name to create in the mind of the public the idea or impression that that machine was the product of the Remington people, so-called, or of Wyckoff, Seamans & Benedict?

Objected to as immaterial, irrelevant and incompetent.

436 A. I should say that it made a decided impression in the minds of the public that it was a Remington machine.

CROSS-EXAMINATION by Mr. Fisher:

39 x-Q. Are you at the present time in any way connected with Wyckoff, Seaman & Benedict? A. No, sir.

40 x-Q. Did you ever seek to continue your connection with the sale of the Remington-Sholes machines? A. I did not.

41 x-Q. Did you ever hear of a machine called the Remington Standard Typewriter? A. Yes, the
437 Remington Standard Typewriter—the Remington typewriter, they are the same thing.

42 x-Q. Is not the machine manufactured by Wyckoff, Seamans & Benedict commonly advertised as the Remington Standard typewriter? A. Somestimes it is, sometimes the Remington.

43 x-Q. While you were acting as agent for the sale of the Remington-Sholes machine did you prepare the advertisements that appeared in the *New Haven Leader?* A. Partly, that is, they were partly taken from the circulars and partly original.

44 x-Q. Did you insert these advertisements on your own responsibility and did you pay for them? A. Yes, sir.

438 45 x-Q. The advertisements were not submitted to the scrutiny of the Howe Scale Company or Page, Dennis & Company before they were inserted in the newspaper? A. No, sir; I think not; not before they were inserted.

46 x-Q. Was it your practice to make all necessary explanation in regard to the Remington-Sholes machine so that it might not be confounded with the Remington Standard? A. Yes, sir.

47 x-Q. The word "Remington" upon the machines sold by you was invariably associated with the word "Sholes" in the form "Remington-Sholes," was it not? A. Why, yes; I presume it was.

*Redirect-examination by Mr. Donnelly:* 439

48 RD-Q. The defendant's counsel has asked you whether you ever heard of a machine called the Remington Standard Typewriter and you have said "Yes, the Remington Standard Typewriter—the Remington typewriter; they are the same thing." State by which name or by what name said machine is generally designated and spoken of by the public and by users of such machine? A. It is generally designated as a Remington typewriter.

49 RD-Q. In putting out your advertisements of the so called Remington-Sholes machine did you or not base them upon the printed matter furnished you by Page, Dennis & Co.; that is to say, statements in the catalogues, &c.? 440

The question is objected to as the witness has already stated that the advertisements were taken partly from the circulars and were partly original.

A. Largely so.

50 RD-Q. Did you find it to be a fact that notwithstanding the statement or disclaimer in your advertisements and in the catalogues and circulars which you distributed that the Remington-Sholes typewriter had no connection with the Remington Standard typewriter, or the Remington typewriter; that the public was still under the impression that that Remington-Sholes machine was the product of 441 Wyckoff, Seamans & Benedict?

Question objected to as not proper redirect-examination, as calling for an opinion or conclusion of the witness and as not the best evidence.

A. I most certainly did.

(Signed) Joseph E. Platt.

442 ROBERT M. JOHNSTON, called as a witness on behalf of the complainant, being duly sworn, testifies as follows:

By Mr. Donnelly:

1. Q. State your name, age, residence, and occupation? A. Robert M. Johnston; age, thirty-three; residence, Boothby's Hotel, 1235 Chestnut Street, Philadelphia, Pa.; occupation, typewriter salesman for Wyckoff, Seamans & Benedict, in territory adjacent to the City of Philadelphia.

2. Q. Have you at any time canvassed the offices or places of business in the City of Philadelphia for the purpose of ascertaining whether the persons or
443 concerns upon whom you called used a typewriting machine or typewriting machines? A. I have.

3. Q. State when you made such canvass; that is, during what months, the year and day or days of the month? A. January 10th, 11th, 12th, and 13th, 1899.

4. Q. Will you now please state at what offices or upon what concerns you called, what question, if any, you asked, and what reply you received at the various places at which you called.

Objected to as irrelevant, immaterial, and incompetent.

444 A. I have a statement in my hand showing at what offices I called, when the calls were made, what questions were asked and what answers were given. I called at the following offices, and in each case asked the question "What typewriting machine do you use" and received the following answers, viz.:

Adams & Baker, 707 Walnut Street January 10th, 1.28 P. M. (lady stenographer); the answer was the Remington.

Alburger, Stoer & Co., 615 Chestnut St., January 10th, 9.41 A. M. (Mr. W. K. Clark), "an old Remington."

American Gas Co., 222 South Third street, January 11th, 3.05 P. M. (Mr. R. L. Babcock), "the Remington." 445

American Iron and Steel Association, 261 South Fourth street, January 11th, 2.25 P. M. (Mr. Swank, manager), "an improved Hammond and a very good Remington."

American Type Foundry Company, 606 Sansom street, January 11th, 4.15 P. M. (Mr. Withom), "the Remington."

William Arrott, 115 South Fourth street, January 11th, 2.05 P. M. (Mr. Arrott, personally), "I use a Rem."

R. L. Ashhurst, 225 South Sixth street, January 11th, 1.30 P. M. (Mr. McIldoney), "Remington No. 2." 446

N. W. Ayer & Sons, Eighth and Chestnut streets, January 11th, 9.50 A. M. (Mr. Wood), "the Remington."

William Ayers & Son, 220 Chestnut street, January 10th, 11.06 A. M. (Miss Cassidy), "I am using a No. 6 Rem. We have two No. 2's and one Densmore."

Baeder, Adamson & Co., 730 Market street, January 11th, 10.35 A. M. (Mr. Myers), "the Hammond altogether."

A. J. & L. J. Bamberger, 606 Chestnut street, January 10th, 9.50 A. M. (A. J. Bamberger), "the Remington."

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Bosshardt & Wilson, 212 South Third street, January 11th, closing out business; had no machines.

Burk & McFetidge, 306 Chestnut street, January 11th, 11.40 A. M. (Mr. Griffin), "two Rems. and one Smith Premier."

H. & H. W. Catherwood, 114 South Front street, January 12th, 10.55 A. M. (Mr. Catherwood), "the Remington."

Central National Bank, 109 South Fourth street, January 12th, 10.10 A. M. (Mr. Debow, assistant cashier), "the Remington."

448 Chester Steel Casting Company, 407 Library street, January 11th, 2.35 P. M. (Mr. Dwight, president), "using a Remington."

Delaware Insurance Company, Third and Walnut streets, January 10th, 3 P. M. (lady stenographer), "have two Smith Premiers and use no Remington."

H. A. Dreer, 714 Chestnut street, January 11th, 1.20 P. M. (Mr. Tull, treasurer), could get no answer; too busy to answer questions.

A. G. Elliott & Company, 30 South Sixth street, January 11, 1.35 P. M. (Mr. Mitchell), "the Remington."

Fire Association, 407 Walnut street, January 10, 2.26 P. M. (Mr. Conderman, Vice-President), "bought
449 two new Remingtons recently."

C. H. Garden & Company, 510 Drexel Building, January 11, 3.55 P. M. (Mr. Garden), "a Remington."

Graff, Albert & Company, 609 Chestnut street, January 10, 4.15 P. M. (Mr. Warren), "the Remington."

W. T. Hagar & Company, 421 Chestnut street, January 10th, 9.42; the office boy thought they used a Remington.

Harrington & Goodman, 619 Chestnut street, January 10th, 9.35 P. M. (Mr. Keller), "The New Century."

O. G. Hempstead & Son, 425 Chestnut street,
450 January 10th, 10.35 A. M. (Miss Smith), "The Remington."

Howe Addressing Company, 234 South Eighth street, January 11th, 10.10 A. M. (Miss Blake), "The Remington."

Jagode & Lewis, 119 Chestnut street, January 10th, 11.20 A. M. (Mr. C. Grove), "Just bought a new Remington."

Johnson & Higgins, 134 South Fourth street, January 11th, 2.10 P. M. (Mr. McClellan), "The Remington."

G. De B. Keim & Company, 610 Market street,

January 11th, 10.55 A. M. (Mr. Walker), "The Rem- 451
ington."

Kendall & Whitlock, 48 South Third street, January 11th, 2. 52 P. M. (E. D. Page, Cashier), "The Remington."

Keystone Publishing Company, 234 South Eighth street, January 11th, 4.30 P. M. (Mr. Thompson), "The Remington, No. 2."

Kramer & Strubing, 626 Chestnut street, January 10th, 9.32 A. M. (Mr. Bowman), "The Remington."

Levy & Lewis, 138 South Third street, January 11th, 3.45 P. M. (Mr. Levy), "Really could not tell; my operator attends to it."

J. T. Lewis Bros. & Company, 231 South Front street, January 12th, 11.25 A. M. (Mr. Henry), "The 452
Remington."

A. Lippincott & Company, 424 Market street, January 11th, 4 P. M. (Mr. Shoemaker), "Using a Remington."

C. J. Shaw & Company, 1226 Chestnut street, January 13th, 1.45 P. M. (Mr. Oppenheim), "Yes, I am using a Remington; no, it is a Renshaw, I think; it is a No. 3 machine and first class. This Renshaw is fighting the Remington and are dead against each other. Now, you go to the Renshaw people and say that you are about to buy a Remington machine, and offer them $70 for theirs. If they don't take it you come to me and I will get it for you at that price."

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Lockwood Folding Box Company, 251 South Third street, January 11th, 3.25 P. M. (Mr. Lockwood), "The Remington."

A. Lowery & Bro., 32 South Front street, January 12th, 10.45 A. M. (Mr. Chambers), "The Remington."

W. J. McCahan, 147 South Front street, January 12th, 11.05 A. M. (Mr. Rich), "Smith Premier."

E. K. Tryon & Company, 10 and 12 North Sixth street, January 13th, 10.20 A. M. (Mr. Sauter), "Yes, we use a Remington, also a Rem-Sholes. Did not like old Remington, secured new one and very much pleased with it. Got new Remington-Sholes through

454 trade of two other machines. Would advise that you buy a Remington."

Brock Commercial Agency, Third and Arch streets, January 12th, 3.10 P. M. (Mr. Shearer, attorney), "Yes, we are using the Remington; they are all bought in New York."

James Strong & Company, 714 Fidelity Building, January 13th, 2.45 P. M. (James), "No, we do not use a Remington. We have a Smith Premier and a Rem-Sholes. Consider the Smith Premier the better machine. Have used it three years and never had a particle of trouble."

D. Appleton & Company, 1219 Arch street, January 13th, 2.25 P. M. (Lady stenographer), "We do
455 not use a Remington, we use the Rem-Sholes and the Barlock. I like the Barlock much the best and consider it the finest machine in the market."

Caraine & Sligo, 918 Filbert street, January 13th, 11.05 A. M. (Mr. Caraine), "We do not use a Remington. We have a Rem-Sholes. It gives great satisfaction. The small indicator is a great help, also good for tabulator work. We are perfectly satisfied."

John M. Maris & Company, 312 Market street, January 11th, 11.10 A. M. (Miss Grey), "The Remington."

Mather & Company, 231 Walnut street, January 10th, 3.05 P. M. (Mr. O'Brien), "We have Reming-
456 ton machines for years."

W. J. Matheson & Company, 126 South Front street, January 12th, 11 A. M. (Miss Jones), "A Remington."

Charles T. Magee & Company, 111 Walnut street, January 10th, 3.30 P. M. (Capt. Magee), "We don't use any machine, but have a Remington."

Merchant's Trust Company, 911 Chestnut street, January 10th, 9.42 A. M. (Mr. Early, Treas.), "The Remington."

George Miller, Son & Company, 255 South Third street, January 11th, 3.30 P. M. (Mr. Miller), "The Remington."

James E. Mitchell & Company, 122 Chestnut street, January 10th, 11.20 A. M. (Mr. Geough), "The Remington." 457

Moore & Sinnott, 232 South Front street, January 12, 11 A. M. (Mr. Dickel), "The Remington."

Morris, Vogel & Bro., 722 Chestnut street, January 11th, 10.25 A. M. (Mr. Vogel), "We use a No. 6 Remington bought a year ago."

Morris Wheeler Company, 1608 Market street, January 12th, 12.15 P. M. (Mr. Shay), "The Remington."

Morrisdale Company, southeast corner of Broad and Chestnut streets, January 12th, 12.50 P. M. (Mr. Sargant), "No. 6 Remington."

Nace & Swartley, 11 South Water street, January 11th, 11.45 A. M. (Mr. Swartley): "The Remington." 458

National Cash Register Company, 829 Chestnut street January 10th, 9.10 A. M. (R. E. Parsons, Manager): "The Remington."

George B. Newton & Company, 308 Walnut street, January 10th, 2.45 P. M. (Clerk): "The Remington. Very partial to Wyckoff, Seamans & Benedict machines."

New York Life Insurance Company, 930 Walnut street, January 10th, 2.35 P. M. (the cashier): "The Remington. New York office buys."

Col. J. P. Nicholson, 139 South Seventh street, January 11th, 1.40 P. M. (Miss Briggs): "Remington No. 3." 459

Northern Pacific Railway, 37 South Third street, January 11th, 2.30 P. M. (William C. Robotham): "No. 6 Remington."

Wanamaker & Brown, Sixth and Market streets, January 12th, 4.05 P. M. (Mr. Woodruff): "The Remington exclusively."

W. F. Dell & Company, 304 South Broad street, January 14th, 10.05 A. M. (closed business).

Miss Mary M. Elm, Lippincott Building, January 12th, 2.40 P. M.: "No, I do not use a Remington. I use a Smith-Premier. I have two of them in constant

460 use, and they give great satisfaction. I had no intention last October other than buying a Remington, but this machine Rem-Sholes was left on trial; I bought it and have never regretted it. I have been told by other agents the Rem-Sholes would not last; in regard to that I cannot at present say."

Philadelphia *Inquirer*, 1109 Market street, January 13th, 11.40 A. M. (Mr. Bacon): "Yes, we use the Remington and Smith Premier. They give about equal satisfaction. In numbers we have about half and half, and really have no choice."

Frugality Coal and Coke Company, 211 Rothschild Building, January 14th, 10.40 A. M. (Miss Butler), "No, I do not use a Remington. We have
461 a Rem-Sholes; it is almost the same as a Remington. I did use a Densmore, also a Remington, but prefer the Rem-Sholes I am now using. It gives great satisfaction."

H. C. McDevitt, Rothschild Building, January 13th, 3.15 P. M. (Mr. McDevitt), "Yes, we have a Remington and also a Rem-Sholes. The latter is no good at all. Practically worthless. The former, although an old machine, is still all right. The Remington is the standard machine to buy."

The Philadelphia Graphite Company, 1101 Stephen Girard Building, January 13th, 4.15 P. M. (Mr. E. W. Inskeep, secretary), "No, we do not use a Remington. We have Remington-Sholes. It gives
462 us satisfaction. It is so easy to keep clean. We are greatly pleased with it."

Edward P. Moxey, 1204 Real Estate Building, January 13, 3.50 P.M. (Mr. Pettit), "No, I do not use a Remington. I have a Remington-Sholes on trial. Did not like it the first day it was sent here, as it was dirty and soiled the paper which proved that they are careless down at that office. I am going to try the Remington and Smith Premier and have not decided which to buy."

The Providence Savings Life Company, 421 Chestnut street, January 13th, 11.00 A. M. (Mr. C. Poindexter, cashier), "Am not now using a Remington

but had one way back in the fifteen thousands. 463
Have a Remington-Sholes now. The New York office authorized the purchase of a Remington, but one of our agents through an insurance deal got this Rem-Sholes very much cheaper. It came from Hawthorne & Sheble. If you want a real good machine and one popular with stenographers you cannot go wrong in buying a Remington."

Mr. Gray, secretary, 1030 Witherspoon Building, January 14th, 11.05 A. M. (Mr. Gray), "We are using a Rem-Sholes. Our purchasing agent sent it here. It is equally as good as the Remington, and as they are not in the trust, if you contemplate a cash transaction you can get considerable off. Our machine, I think, is all right." 464

L. H. Parke & Company, 232 Market St., January 11th, 11.20 A. M. (Mr. Semple), "several. Could not recall names."

Penn. National Bank, 700 Market St., January 11th, 10.45 A. M. (Mr. Clifton, cashier), "I think the Remington."

Pennsylvania Salt Manufacturing Company, 115 Chestnut St., January 10, 11.25 A. M. (Mr. Boar), "We use the Remington and when we buy that is what we want."

Philadelphia News Bureau, 5th and Chestnut Sts., January 10th, 10.00 A. M. (Mr. Brower), "The Remington."

Philadelphia Saving Fund Society, 7th and Walnut 465
Sts., January 10th, 1.33 P. M. (Mr. Beck), "The Remington and Hammond."

Read & Pettit, 4th and Chestnut Sts., January 11th, 2.40 P. M. (Mr. Runk), "use two Remingtons."

I. Reifsnyder, Son & Company, 110 South Front St., January 12th, 10.50 A. M. (the stenographer), "The Remington."

Rosskan, Gerstley & Company, 226 South Front St., January 12th, 11.15 A. M. (Mr. Lacy), "The Remington."

Searle, Vanneman & Company, 734 Market St.,

466 January 11th, 9.40 A. M. (stenographer), "The Remington."

Shriver, Bartlet & Company, 435 Chestnut St., January 10th, 10.15 A. M. (Mr. Middleton), "The Caligraph and Remington."

William Simpson Sons & Company, 130 Chestnut St., January 10th, 11.13 A. M. (Mr. Brown), "Mostly Remingtons."

Snow Church Company, 439 Chestnut St., January 10th, 10.06 A. M. (Mr. Reeber), "The Remington."

State Line & Sullivan Railroad Co., 204 Walnut Place, January 10th, 2.40 P. M. (Mr. Ackley), "The Remington and Hammond."

J. C. Stillwell, Esq., 727 Walnut street, January
467 10, 1.20 P. M. (Mr. Stillwell), "The Remington."

Lewis Thompson & Company, 127 Walnut street, January 10, 3.20 P. M. (Mr. Risley), "The Remington."

United Firemen's Insurance Company, 419 Walnut street, January 11, 11.55 A. M. (Mr. Sweeney, Secretary), "The Remington."

Walker & Keplar, 531 Chestnut street, January 10, 12 M. (Mr. McCarthy), "We use two Remingtons."

West Jersey Express Company, foot of Market street, January 11, 11.25 A. M. (Mr. Eldridge), "The Remington."

Westmoreland Coal Company, 220 South Third
468 street, January 11, 3.10 P. M. (Mr. Yeardsley), "The Remington."

William Wharton, Jr., & Company, 310 Walnut street, January 10, 2.53 P. M. (Mr. Koppenhœffer) "25th & Washington office does buy them. Stenographers use the Remington."

A. W. Wister & Sons, 405 Walnut street, January 10, 1.50 P. M. (Mr. Knabe), "The Remington."

Peter Wright Sons, 305 Walnut street, January 11, 11.45 A. M. (Mr. Middleton), "The Remington."

Lehigh Valley Railroad Company, 228 South Third street, January 11, 3.15 P. M. (Mr. Hartshorne, Assistant Purchasing Agt.), "Mostly Remingtons."

Pennsylvania Railroad Company, Broad street station, January 12, 12.05 P. M. (W. C. Groan, Assisting Purchasing Agt ), "Hammond and Remingtons principally." 469

Adams Express Company, 14 South Broad street, January 12, 12.35 P. M. (Mr. Chidsey, chief clerk), "The Remington."

Philadelphia & Reading Railroad, Twelfth and Market streets, January 11, 9.20 A. M. (Mr. Beneke), "Principally Remingtons."

Provident Life and Trust Company, Fourth and Chestnut streets, January 12th, 4.10 P. M. (Mr. Evans): "Using the Remington machine."

David E. Dallan, Seventh and Walnut streets, January 13th, 10.45 A. M. (Miss Williams): "Had a Remington for a number of years. Now have a Rem-Sholes. The nickle plating was hard on eyes, also weight of top and too much complicated. Remington a real good machine, but am delighted with the Rem-Sholes I am now using." 470

*Public Ledger*, Sixth and Chestnut streets, January 12th, 4 25 P. M. (Mr. Steel, private secretary to Mr. Drexel): "Yes, we use the Remington altogether. Consider it an A 1 standard machine. Understand there is a Remington-Sholes, but do not consider it of much use. Would advise, as a disinterested party, that you buy a W. S. & B. Remington. If we needed a machine that is what we would buy."

B. C. Tillinghast & Company, 242 Market street, January 12th, 3.00 P. M. (Mr. Carr): "We have no Remington, but have a Remington-Sholes. Had it six months and gives splendid satisfaction." 471

C. J. Heppe, 1117 Chestnut street, January 13th, 12 M. (Mr. Romig): "No, I do not use a Remington; I use a Remington-Sholes. I have no prejudice, but consider it a wonderfully good machine. My reason for buying was that the Remington, Smith-Premier, &c., were in the typewriter trust, and they exacted certain conditions I would not agree to, consequently bought a machine outside of trust, which

472 was the Remington-Sholes. They treated me very nicely."

5 Q. In making your canvass among the offices which you have mentioned in Philadelphia, what practice or rule did you observe, if any, as to making memorandums of the inquiries which you made and the answers which you received? A. By a small slip of paper in my hand on which I marked answer after finding out the proper person to see on the subject of typewriters.

6 Q. Did you make your memoranda at the time you made the inquiry and received the answer? A. On some occasions, yes.

7 Q. And on any other occasions when? A. Im-
473 mediately after leaving the person whom I interviewed.

8 Q. Had any of these offices which you visited where you were informed that they used the Remington or Remington machines, did you see any such typewriting machine or any typewriting machine manufactured or sold by Wyckoff, Seamans & Benedict? A. In some of the offices, yes.

9 Q. Do you know by what name the machines manufactured by Wyckoff, Seamans & Benedict, and sold in or about the City of Philadelphia, are generally known or designated? A. Either Remington or Remington Standard. Some people would say the Remington and others would say Remington
474 Standard.

10 Q. Which name is generally used? A. The Remington.

CROSS-EXAMINATION by Mr. Fisher:

11 x Q. I notice some of the answers begin, "No, I do not use," &c. What was the form of the question that you put to the parties making such answers? A. The question was in that case, "Do you use a Remington machine?"

12 x-Q. Before asking your questions, did you introduce yourself, and if so, how? A. Well, I would

ask, on going in a business house, to see the person 475
who was interested in the using or purchasing of typewriters, and would then direct either one of the two questions to them. On some occasions I introduced myself by stating that I was Mr. Johnston, and sometimes by a card.

13 x-Q. A business card? A. A business card, yes, sir.

14 x Q. With the address of Wyckoff, Seamans & Bededict? A. No, sir, it was my personal business card. I was at that time in business for myself, but was employed by Wyckoff, Seamans & Benedict to make this canvass.

15 x-Q. Had you received from any one any directions or indications as to where you were to go in 476
making this canvass? A. A list of prominent people was furnished me to call on, one hundred and two in all.

16 x-Q. Then you did not call on these people at random, but simply called on those whose names had been furnished you by Wyckoff, Seamans & Benedict, is that true? A. Yes, sir; called on the list as furnished.

17 x-Q. Was any explanation given to you as to the purpose for which this canvass was to be made? A. None other than to find the makes of machines these people were using.

18 x-Q. Did you write out the list from which you have been reading your answer to direct question 4? 477
I mean did you make the copy from which you have been reading? A. No, not on the typewriter. I sat alongside of the operator and dictated from my notes.

19 x-Q. Have you the original of your notes? A. I think I have it in my possession in Philadelphia; I couldn't say positively. I think I could put my hand on the book in Philadelphia in my room.

20 x-Q. I notice that you state that when you called upon the American Iron and Steel Association, Mr. Swank said in answer to your question, "An improved Ham," &c. Are you positive that Mr. Swank did not say "An improved Hammond"?

A. I would rather believe that Mr. Swank said—I am not positive.

Q. Are you positive Mr. Swank used the word "Remington"? A. No; I am not positive that he did.

Q. If I understand you, therefore, Mr. Swank may have said, "An improved Ham. and a very good Rem." or may have said, "An improved Hammond and a very good Remington," is that correct? A. Yes, that may be correct.

Q. I notice upon the list from which you read your answer to direct question 4, some pencil memoranda and one memorandum reads, "Was under impression they had Rem-Sho, found not." Who made these memoranda? A. I do not know; they are not mine.

Q. In whose possession has this list from which you read your answer to question 4 been since it was made? A. I can't answer; I don't know.

Q. Has it been in your possession all the time? A. No.

Q. State what became of it after it was made and when it got back into your possession? A. I gave the list to Mr. John Selby, manager of Wyckoff, Seamans & Benedict in Philadelphia, at the conclusion of the canvass, and I have not had it in my possession since.

Q. You would not be able without reference to this list from which you have read your answer to direct question 4 to state the exact language of the answers given you? A. Not verbatim; I might recall some of them and I might not recall others.

Q. But you have depended upon this list for your answer? A. As it was the result of my work; yes.

Q. Did you compare this list with your original list? A. Yes, sir; as we went along each name was compared.

The deposition of this witness is suspended at the request of counsel for complainant to

permit witness to look for and produce his original list. 481

CROSS-EXAMINATION of Mr. JOHNSTON continued this 28th day of April, 1899:

30 x-Q. Have you given the names of all the parties upon whom you called and asked the question, "What typewriter do you use"? A. Yes, sir.

31 x-Q. Did you ever sell a Remington-Sholes typewriter? A. No, sir.

Counsel for defendant objects to and moves to strike out the testimony of witness in answer to direct-question 4 for the reason that such testimony is manifestly of a secondary character and incompetent, as it has been shown that the list employed by the witness in giving such testimony was not his original list. 482

REDIRECT-EXAMINATION by Mr. Donnelly:

32 RD-Q. When you made your canvass of the various offices in Philadelphia which you have named for the purpose of ascertaining what typewriting machines the various persons and concerns used whose offices you visited, did you make any memorandum in writing at the time you called on these respective persons? A. Yes.

33 RD-Q. Are you now able to produce said original memorandum? A. Yes. 483

34 RD-Q. In what, if anything, did you make your memoranda? A. In a pass book or copy book.

35 RD-Q. Can you produce such book, and if so, please produce it? A. I can and do.

36 RD-Q. Is this book or memoranda now in the same condition that it was after you had finished your canvass? A. No, it is partly mutilated.

37 RD-Q. How did it become mutilated and when? A. When it became mutilated I imagine is three weeks ago, and it was torn during a quiz with a party of doctors, who were in my room.

484 38 RD-Q. At the time of this so-called doctor's quiz was this memorandum book in your room and where was it kept, so far as you know? A. On the top of a small desk in which I keep books and papers, lying on top.

39 RD Q. How do you know it was torn by them, or mutilated by them, or any of them? A. From inquiry as to who tore the book.

40 RD-Q. Were you present and did you see it torn? A. I was not present, and did not see it torn.

41 RD-Q. Now, at the time when you made the typewritten copy to which you referred as a memorandum in giving your answer to direct question 4, was this original memorandum book which you now
485 produce in a mutilated condition, as it now appears? A. It was not; it was perfect.

42 RD-Q. From what was this typewritten list or memorandum made, and how was it made? A. It was made from the original notes dictated by me to a lady stenographer.

43 RD-Q. Then, as I understand you, you dictated from the original notes, while the stenographer wrote what you dictated? A. Yes, sir.

44 RD-Q. How soon after you completed this canvass did you make up this typewritten list which you have produced, and which you have used as a memoranda in giving your testimony? A. The following day after concluding the canvass.

486 45 RD-Q. At the time you made your original canvass and made your written memoranda, as you have stated, and at the time the typewritten memoranda or schedule was made were the facts concerning said canvass, that is to say, the names of persons and the offices visited and what they said in response to your questions, then fresh in your mind? A. Yes, sir.

46 RD-Q. Did you in making your memorandum and at the time you made your memorandum, as you have stated, know the facts and set them down in your memoranda as you then knew them to be? A. Yes.

47 RD-Q. Is your recollection now or was your recollection when testifying yesterday such that you could state all the details and all the circumstances attending your visits to these various offices independent of and without referring to your original, or to your typewritten copy therefrom? A. No, I hardly think that possible to remember one hundred and two people for three months. 487

48 RD-Q. Your attention has been called by defendant's counsel to certain writing which appears on your typewritten memorandum in pencil, and I ask you to state whether this writing in pencil was on this memorandum at the time you delivered it into the custody of the person who received it? A. It was not. 488

49 RD-Q. Is this writing which appears in pencil on your typewritten schedule or memorandum in your handwriting? A. It is not.

50 RD-Q. In whose handwriting is it? A. I am unable to say.

Complainant's counsel now offers in evidence the original memorandum book which has been produced, and identified by the witness as the book of original entries, and he also offers in evidence the typewritten copy or schedule made therefrom from dictation by the witness, and the same are marked respectively "Complainant's Exhibit Johnston Original Memorandum Book," and "Complainant's Exhibit Johnston Typewritten Copy thereof." 489

RECROSS EXAMINATION:

51 Re-x-Q. Are you confident, Mr. Johnston, that you put down the answers from the various parties in your original memorandum book offered in evidence in precisely the same manner in which such answers were given to you, using abbreviations when the parties used abbreviations, and using full names when the parties used full names? A. In the original memorandum, yes.

490 52 Re-x-Q. So that if there should appear any discrepancy between the original memorandum book and the typewritten list introduced in evidence, you would rely upon the memorandum book, would you not? A. I would.

53 Re-x-Q. In your answer to direct question 4, after referring to the statement you then held in your hand and which was the typewritten list in evidence, you stated that "William Arrott, 115 South 4th St., Jan. 11th, 2.05 P. M., (Mr. Arrott personally) 'I use a Rem.'" I call your attention to the original memorandum book in evidence on page 2 of which I find the following: "Arrot, Wm., 115 S. 4 St., Mr. Arrott, I use a Remington." Have
491 I read correctly from your memorandum, and is it not a fact that Mr. Arrott said "I use a Remington?" A. It is, as that book states—the original book; that is the one I bank on.

54 Re-x-Q. And it is not correct that Mr. Arrott said "I use a Rem"? A. The abbreviations were the fault of the stenographer, I suppose.

55 Re-x-Q. In your answer to direct question 4 you state "American Iron & Steel Association, 261 South 4th St., Jan. 11th, 2.25 P. M. (Mr. Slank, Manager), 'An improved Hammond and a very good Remington.'" By reference to the typewritten list introduced in evidence I find it stated, "Amer. Iron & Steel Asso., 251 S. 4th St., Jan. 11,
492 2.25 P. M (Mr. Swank, Manager), 'An Improved Hammond and a very good Rem.'" By reference to your original book I find, "American Iron & Steet Asso., 261 S. 4th (Mr. Swank, Mgr.), An improved Hammond and a very good Remington." Please examine your original note book, state whether I have correctly read therefrom and with this book before you state what Mr. Swank did say? A. Whatever that book says and you read it correctly.

56 Re x-Q. So that the typewritten list introduced in evidence is in error in this respect, is it not? A. The abbreviations are incorrect.

57 Re-x-Q. I find on page 1 of the typewritten list "Amer. Type Foundry Co., 606 Sansom St., Jan. 11, 4.15 P. M. (Mr. Withom), The Rem.", whereas I find in your original memorandum book, "American Type Founder Co., 606 Sansom, Mr. Withom, The Remington." I ask you which of these statements is correct and what Mr. Withom did say? A. The original book is correct. He said "the Remington." 493

(Signed) ROBERT M. JOHNSTON.

HARRY W. CONANT, called as a witness on behalf of the complainant, being duly sworn, testifies as follows:

494

By Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Harry W. Conant; age, twenty-nine; residence, 308 Harvard street, Cambridgeport, Mass.; occupation, life insurance agent.

2 Q. Have you at any time at the request of anybody canvassed certain offices in the City of Boston with a view to ascertaining what typewriting machines, if any, were in use in the offices which you visited? A. Yes.

3 Q. At whose request did you make such canvass? A. Mr. Rowell.

4 Q. Do you remember when you made this canvass of offices in the City of Boston with a view to determining or ascertaining what typewriting machines, if any, were used in said offices? A. I do. 495

5 Q. Please state when you made such canvass? A. I started January 11, 1899, and stopped January 14th.

6 Q. How many offices or places did you visit in all in the City of Boston? A. That I can't say without first having counted the names on my list.

7 Q. Did you keep any record of the offices you visited? A. Only those wherein there was a Remington typewriter used.

496 8 Q. Do you know how many offices you visited wherein there was a Remington typewriter used? A. I can't state exactly the exact number.

9 Q. Have you any means of refreshing your recollection for the purpose of stating the number you visited, and if so, please refresh your recollection and state the number of offices which you visited in the City of Boston for the purpose of ascertaining what typewriting machines they used? A. Yes, I have means. I have refreshed my recollection. I visited one hundred and thirty two places.

10 Q. Were these separate and distinct offices, that is, offices located on different streets and different numbers? A. Not all. As I recollect, in one case I
497 asked two stenographers in the same office and got the same reply from each.

11 Q. Do you now remember, and if so, state what questions, if any, you asked when you visited these respective offices? A. In most every case, "What typewriter do you use?" In some cases, "What typewriters do you use?"

12 Q. Do you now remember, and if so, you may state what response or reply you received to the question which you asked in these various offices? A. In most cases simply "Remington," a others, "A Remington," "Remington," and in one case, "I use the Standard, and is not the Remington the Standard."

498 13 Q. At the time you made this survey and before beginning it, had you a list of offices which you were to visit or were instructed to visit, and if so, where did you obtain the list? A. No.

14 Q. What instruction did you receive in regard to making this survey, and if so, from whom? A. I was instructed by Mr. Howell, the selling agent for the Remington machine in Boston, to survey any part of Boston for the purpose of finding out what the people in general called the Remington machine.

15 Q. The instruction to you was to visit such offices as you saw fit and to inquire what, in such

502 CROSS-EXAMINATION by Mr. Fisher:

23 x-Q. Does the list referred to by you in refreshing your memory before answering question 9 represent all the offices that you visited in which the Remington machine was employed? A. All.

24 x-Q. And do the answers as stated by you in answer to question 12 give the name of the machines as such names were given to you by the various parties of whom you asked the question "What typewriter do you use"? A. With few exceptions, which are as follows: "Remington No. 6." "We use the Remington." "Last, Remington." "We use Remingtons entirely, I believe." "We use the Remington, sir." "We use the Smith Premier,
503 Densmore, and Remington." "We have a Remington, here, two machines." "I use the Remington." "Remington No. 7." "Remingtons, altogether." "Hammond and Remington." "I think the Remington." "Remington No. 2." "We use Remingtons here." "A Remington machine." "We have a Remington." "Two Smith Premiers and a Remington, I think." "We use Remingtons principally." "We use the Remington No. 6." "I don't own one, the other gentleman in the office has a Remington; just got a new one." "Remington typewriter." "We have a Remington." "Two Remingtons." "A No. 7 Remington." "I am using a Remington here." "We did have a Rem-
504 ington." "I use the Remington No. 6."

(Signed) HARRY W. CONANT.

Adjourned to Friday, April 28, 1899, at 11 A. M.

NEW YORK, April 28, 1899, 11 A. M. 505

Met pursuant to adjournment.

Present—Counsel as before.

WALTER M. SCHEUMAKER, called as a witness on behalf of the complainant, being duly sworn, testifies as follows:

By Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Walter M. Scheumaker; age, twenty-two; residence, Hartford, Conn.; occupation, stenog- 506
rapher.

2 Q. Please state where and with what concern, if any, you are now engaged as a stenographer? A. Ætna Life Insurance Company of Hartford, Conn.

3 Q. How long have you been in the employment of the Ætna Life Insurance Company of Hartford, Conn.? A. Since June 4, 1898.

4 Q. Where previous to that time had you been engaged in the occupation of stenographer? A. Boston, Mass.

5 Q. Have you ever heard of the so-called Remington-Sholes typewriting machine, or Rem-Sho typewriting machine, and if so, when did such machine first come to your knowledge, or when was your at- 507
tention first drawn to it? A. Yes, sir; about August, 1898.

6 Q. Who drew your attention to the so-called Remington Sholes typewriting machine in August, 1898? A. Thomas F. Crean, representing Wyckoff Seamans & Benedict.

7 Q. Well, in pursuance of that fact, that is, your attention being drawn to the so-called Remington-Sholes machine by Mr. Crean, what did you do? A. I communicated with Page, Dennis & Company, of New York City, making overtures to secure the agency for Hartford City and vicinity.

508 8 Q. What were you seeking to secure the agency of? A. The typewriting machine that Mr. Crean called the Remington-Sholes or Rem-Sho typewriter.

9 Q. And did you, in pursuance of your interview with Mr. Crean in relation to that machine, enter into a correspondence with anybody, and if so, state with whom? A. Messrs. Page, Dennis & Company, and subsequently with the Remington-Sholes Company.

10 Q. Please state where your correspondence was directed, or your letters were directed and from what source you received letters addressed to Page, Dennis & Co., and the Remington-Sholes Company? A. To 341 Broadway, New York City, and from which
509 I received my replies.

11 Q. What was your object in engaging in this correspondence with Page, Dennis & Company and with the Remington-Sholes Company? A. To secure information in regard to this so called Remington-Sholes, or Rem-Sho typewriter, and as to Messrs. Page, Dennis & Company's methods of business

12 Q. When you say in your last answer that you engaged in this correspondence for the purpose of ascertaining Page, Dennis & Company's methods of doing business, do you or not refer to their methods as regards the sale and offering for sale of the so-called Remington-Sholes typewriter? A. Yes, sir.

13 Q. At whose request did you engage in this
510 correspondence? A. Wyckoff, Seamans & Benedict.

14 Q. And that was brought about by whom? A. Thomas F. Crean.

15 Q. I show you a letter bearing date September 28, 1898, purporting to be addressed to you by the Remington-Sholes Company, H. I. Seddon, manager. I ask you to examine the same and to say whether or not you received that letter through the mail, and if so, about when you received it? A. I did, about September 29, 1898.

16 Q. Do you recognize said letter as the letter

which you received through the mail about September 29, 1898? A. Yes, sir. 511

The letter shown the witness, and identified by him, is offered in evidence and marked "Complainant's Exhibit Remington-Sholes Company Seddon Letter, Sept. 28, 1898."

17 Q. I show you another letter purporting to have been written to you by the Remington Sholes Company, bearing date November 2, 1898, and ask you to examine the same and to state whether or not you recognize said letter as one which you received through the mail? A. I do.

18 Q. Please state when, according to your recollection, you received said letter? A. November 2, 512 1898.

The letter shown the witness is offered in evidence and is marked "Complainant's Exhibit Remington-Sholes Letter, Nov. 2, 1898."

19 Q. I call your attention to another letter purporting to be addressed to you, bearing date November 18, 1898, by the Remington Sholes Company, and ask you to examine the same and state whether or not you recognize said letter as one which you received by mail? A. I do.

20 Q. When, according to your recollection, did you receive said letter? A. To the best of my recollection I received it in the one o'clock mail, 513 November 18, 1898.

The letter shown the witness, and identified by him, is offered in evidence and marked "Complainant's Exhibit Remington-Sholes Company Letter Nov. 18, 1898."

21 Q. I notice in these letters, which you have identified, a reference to a Mr. Seddon. Did you at any time have any personal interview with any person by that name, and if so, you may state when and where such interview took place? A. Novem-

514 ber 2, 1898, at the Hartford Hotel, at Hartford, Conn.

22 Q. Did Mr. Seddon call upon you at your place of business before the interview occurred? A. Yes, sir.

23 Q. At the time he first called upon you at your place of business were you presented with any card prior to your meeting him? A. Yes, sir.

24 Q. I show you what purports to be the card of one H. I. Seddon, Manager, 341 Broadway, New York, N. Y., and ask you if you recognize that as the card which you received at the time Mr. Seddon called upon you at your place of business. A. I do.

515 The card shown the witness, and identified by him, is offered in evidence and marked "Complainant's Exhibit Seddon Card."

25 Q. Did you receive this card from Mr. Seddon, or was it brought to you by somebody else? A. Mr. Seddon presented me with that card himself personally.

26 Q. State, if you know what the purpose or object of Mr. Seddon's visit to you was on the 2d of November, 1898? A. Twofold; first, to show me the so-called Remington Sholes typewriter, or Rem-Sho typewriter; secondly, to try to come to some arrangement whereby I was to assume the agency for this so called Remington-Sholes, or Rem-Sho
516 typewriter.

27 Q. At the time Mr. Seddon called upon you and your interview with him on the 2d of November, 1898, did you learn from him whom he represented, if any one, as regards this Remington-Sholes machine? A. No, sir; not to my recollection.

28 Q. Did he or not state to you in substance, or effect, that he was acting as an agent in introducing this machine to the public? A. Yes, he did.

29. Q. Did you learn from him in that interview what he had been doing in the way of establishing agencies for the sale of the Remington-Sholes machine, so-called? A. Yes, sir.

30 Q. If you remember, state briefly what he said in that regard? A. He informed me that he was just returning from localities in Maine where he had been able to secure agents for this so-called Remington-Sholes, or Rem-Sho typewriter, in several places. 517

31 Q. Do you recall any places in which he stated he had established agencies, and if so, state what he said in that regard? A. I do. He said he had been able to get a Mr. Bartlett, the agent for the Remington Standard typewriter, to represent and take up the sale of this so-called Remington-Sholes, or Rem-Sho typewriter, also that he had secured Wyckoff, Seamans & Benedict's agent at Bangor, Maine, and that he had secured a party to act as agent at Ellsworth, Maine. 518

32 Q. Did he mention to you the fact that he had secured any other of Wyckoff, Seamans & Benedict's agents to take up the so-called Rem-Sho machine other than those you have mentioned as agents which he had secured in Maine? A. No, sir.

33 Q. Did he say anything to you in that conversation about any sale which he had made or orders which he had taken for the so-called Remington-Sholes machine, and if so, state briefly what he said in that regard? A. Yes, sir. He said he had sold a machine and had in his possession the party's check, that is to say, the party he appointed at Ellsworth, Maine, in payment for one of these so-called Remington-Sholes or Rem-Sho typewriters; that he had an order from the appointee at Bangor and also at Portland for one machine each, respectively; that he had secured an order from a firm doing business under the name of Messrs. Edward Babb & Sons, 42 Arch street, Boston, Mass., for fifty of these so-called Remington-Sholes, or Rem Sho typewriters, and that they had taken up the agency for Boston and vicinity. 519

34 Q. Did they say anything to you in that interview as to prices, that is to say, what prices you were to be paid for these so-called Remington-Sholes

520 machines by the parties, or any of them, who had purchased or agreed to purchase the same? A. Yes, sir.

35 Q. You may state what you remember, if anything, that Mr. Seddon said in regard to the prices at which these machines were sold or to be sold? A. The prices at which these so-called Remington-Sholes typewriters were to be sold at were various. The agent at Ellsworth was to pay for his machines $100 less a discount of 35 and 3 per cent. The agents at Bangor and Portland were to receive the same discount. The agents at Boston—now I have a memorandum which if I may be allowed to refer to it will enable me to state practically what this dis-
521 count was.

36 Q. If you desire to do so, you may refer to any memorandum you may have for the purpose of refreshing your recollection with regard to these discounts concerning which you have been asked in the last question? A. I find, upon referring to my memorandum, that the agents in Maine were to receive 33 and 5 per cent. discount, and that Messrs. Babb & Company were to receive 35 per cent., and an additional discount of 5 per cent. off for cash in ten days.

37 Q. What discount, if any, did Mr. Seddon offer you, if he did offer you any, in that conversation? A. 35 per cent. and 5 per cent. cash within thirty
522 days.

38 Q. During that conversation did Mr. Seddon say anything concerning the president or other officers of the Remington-Sholes Company, or persons who were connected therewith, and if so, please state briefly what he said in that regard? A. Yes, sir; he did. To the best of my recollection, his language was, in substance: "Our Mr. Fay, who is the president of the Remington-Sholes Company, is a man worth fifteen millions of dollars. Our Mr. Sholes is also very wealthy. He is the silent partner, although actively engaged in our factory. Our Mr. Remington, our manager, is a

man of marked executive ability, and he, Mr. Rem- 523
ington and Mr. Sholes were the original inventors of the Remington typewriter."

39 Q. Did he say anything to you in that conversation as to cutting prices or slashing prices in case you took the agency for the so-called Remington-Sholes machine?

Counsel for defendant objects to this and all similar questions relating to the prices of the machines, as such questions have no bearing upon the matters at issue in this cause?

A. Yes, he did.

40 Q. State briefly, and without going too much into details, what you remember he said with regard 524
to cutting or slashing prices?

Same objection.

A. To the best of my recollection, his language was in substance, "Mr. Scheumaker, if you take up the agency for our typewriter we will allow you to do almost anything in the way of cutting in order to secure the business; you may slash right and left. If a competitor offers five per cent. you may give ten, and where a machine of another make is taken in exchange, if they give five you can go eight and go up to twelve and a half per cent., and if you have to give the stenographer a five dollar bill or so as a persuader, you may do so; anything to get the 525
business. We are not in the trust and we mean to fight them."

41 Q. In the course of that conversation did Mr. Seddon say anything to you as to where the Remington-Sholes machine, or so-called Rem-Sho machine, was being sold by his principals, and if so, you may state what he said in that regard?

The question is objected to as incompetent, immaterial and irrelevant.

A. Yes, he did. He informed me that, aside from their domestic business, they had an excellent for-

526 eign trade with Germany, South America, Cuba and Porto Rico.

42 Q. Do you remember whether he mentioned any sales of typewriters as having been made by his principals, or those whom he represented, to any railroad company, and if so, please state what he said in that regard?

Same objection.

A. Yes, I do. If I may be allowed to refer to a memorandum in order to refresh my memory, I can answer fully.

43 Q. Well, without reference to your memorandum, if you remember anything he said in that re-
527 gard, please state it?

Same objection.

A. To the best of my recollection, it was the Southern Railway. They had taken out several Remington typewriters, including one wide carriage machine, replacing them w 'h the so-called Remington-Sholes, or Rem-Sho typewriters.

44 Q. Did he make any statement to you as regards the sale of the so-called Remington-Sholes typewriter to the Government?

Same objection.

A. Yes, sir.

528 45 Q. If you remember what he said in that conversation as regards the number of typewriters which his principals had sold the Government and the price obtained therefor, please state what he said on that subject?

Same objection.

A. He stated they had sold to the United States Government one hundred and thirty of these so-called Remington-Sholes, or Rem-Sho typewriters. If I may be allowed to refer to my memorandum to refresh my memory, I can answer with regard to price.

46 Q. Well, you may refer to your memorandum and refresh your recollection and then state, without reference to your memorandum, what you remember he said as to the price which his principals received from the Government for these one hundred and thirty machines? 529

Same objection.

A. Eighty dollars each.

47 Q. During the course of the conversation between you and Mr. Seddon, do you remember whether or not anything was said, either by you or by Mr. Seddon, as regards the use of the name "Remington" by the Remington-Sholes Company or in connection with the Remington-Sholes typewriter or Rem-Sho typewriter? A. Yes; I do. 530

48 Q. You may state, if you recollect, what, if anything, was said by you, or by Mr. Seddon, in that conversation as regards the use of the name Remington by the Remington-Sholes Company, or in connection with the machine, which they were manufacturing and offering for sale, and, if your recollection is not clear in that regard, you may refer to any memorandum, if you have one, which will aid your recollection? A. In reply to this question, viz., "Well, Mr. Seddon, how do you come by the name of Remington? I thought there was a statute or a law forbidding the use or adoption of a name or trade-mark that had become the property of another by virtue of precedence or use," he replied, to the best of my recollection as follows: "Oh, well, hasn't our Mr. Remington a right to use his own name?" 531

49 Q. In that conversation did he state to you the subject of an interview which he had had with some one in the New York store of Page, Dennis & Company, and if so, will you state the substance of what he said as regards that interview?

The question is objected to as immaterial, irrelevant and incompetent and as apparently calling for secondary evidence.

532 A. Yes, he did. To the best of my recollection, it was in substance, " Now a man came in our store in New York only the other day and, says he, 'Is this the Remington Company?' He (Seddon) 'Yes, sir; it is,' the party, Seddon showing him a typewriter; ' Well, that doesn't look like the Remington typewriter, I saw. Are you sure this is the Remington Company?' He, Seddon, replying, ' Yes, sir, this is the Remington Sholes Typewriter Company.' ' Well, who sells the Remington typewriter?' He (Seddon) replying, ' I don't know of any Remington Typewriter Company selling the Remington typewriter. There is a Wyckoff, Seamans & Benedict who sell the Remington Standard Type-
533 writer.' "

50 Q. Did Mr. Seddon say anything to you in that conversation about how you were to approach a prospective buyer in case you took the agency. A. Yes, he did.

51 Q. You may state briefly what Mr. Seddon said in that regard? A. It was substanially, to the best of my recollection, as follows: In reply to my question, " Well, Mr. Seddon, how would you suggest approaching a prospective customer?" he replied, "Well, where you have a prospective buyer, take the machine in and show it to him. If he says anything about price, try to steer off, say, ' oh, never mind about the price, unless you know you can clinch the sale right there
534 and then, but if you are suspicious that he has a leaning toward a Remington, or Smith Premier typewriter, why, just tell him you would like to have him get in a Smith and a Remington and place them side by side. I'll risk he'll buy the Remington-Sholes or Rem-Sho machine."

52 Q. Did he say anything in that connection about cutting prices?

The question is objected to as the matter of prices has no bearing upon the issue in this case.

A. Yes, sir.

53 Q. You may state briefly what he said in that regard so far as you now recollect? 535

Same objection.

A. To the best of my recollection, Mr. Seddon continuing to coach me as "how" to sell a typewriter, said "Now, in regard to prices you state that our price is $100, and if you can't get that say you will give him five per cent. discount; then offer him ten, fifteen, twenty or twenty-five; anything to get the business, and where you replace a competitor's machine, you may offer in exchange five per cent. and, if necessary, give ten and as high as twelve and a half per cent. We'll let you slash right and left as long as you can make a sale." 536

54 Q. Did you have any interview with Mr. Seddon subsequent to this interview of November 2, 1898, concerning which you have testified? A. No, sir.

55 Q. Did you get the agency or take the agency for this so-called Remington-Sholes Machine? A. No, sir.

56 Q. Did you have any interview with anybody else connected with Page, Dennis & Co. or the Remington-Sholes Company after this interview with Mr. Seddon on the 2d of November, 1898? I mean personal interview. A. No, sir.

[RECESS.] 537

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CROSS-EXAMINATION by Mr. Fisher:

57 x-Q. When Mr. Thomas F. Crean called your attention to the Rem-Sho typewriter in August, 1898, what did he state that he wished you to do? A. He wished me to take up the agency for it.

58 x-Q. Do I understand you to say that Mr. Thomas F. Crean, representing Wyckoff, Seamans & Benedict, wished you to undertake the agency for the sale of Rem-Sho typewriters? A. Yes, sir.

538 59 x-Q. You knew that he was a representative of Wyckoff, Seamans & Benedict at that time? A. Yes, sir.

60 x-Q. What reason did he give for wishing you to take the agency of the Rem-Sho typewriter? A. So that I might ascertain information regarding the Remington-Sholes Company and their product which Wyckoff, Seamans & Benedict desired to obtain.

61 x-Q. What arrangements were made with Mr. Crean in regard to paying you for this service? A. The assurance that a fair compensation would be given me.

62 x-Q. By whom was such compensation to be
539 given you? A. Wyckoff, Seamans & Benedict.

63 x-Q. And in pursuance of this understanding with Mr. Crean you were to obtain the agency for the sale of the Rem-Sho typewriter? A. Yes, sir.

64 x-Q. And in pursuance of this understanding, you opened correspondence with Page, Dennis & Company? A. I did.

65 x-Q. What did you say to Page, Dennis & Company when you wrote to them in this regard? A. Well, to the best of my recollection in substance, I stated that the Remington-Sholes typewriter has come to my notice, and that as I saw they had no agent in Hartford, and being an old
540 Remington operator, inquired of them what inducements they would offer me to take up the agency.

66 x-Q. You had no intention of taking such agency, had you? A. Yes, sir.

67 x-Q. Then it was your purpose to take such agency with a view of doing detective service for Wyckoff, Seamans & Benedict? A. Not wholly.

68 x-Q. But it was your intention to have Wyckoff, Seamans & Benedict benefited by your taking such agency, was it not? A. Not wholly.

69 x-Q. You intended, however, in taking such agency to give Wyckoff, Seamans & Benedict the

benefit of any information that you might derive by reason of such agency and which you might think to be of benefit to them? A. Yes, sir. 541

70 x-Q. Were you paid by Wyckoff, Seamans & Benedict for this detective service? A. No, sir.

71 x-Q. Were you paid by any one for such service either directly or indirectly? A. No, sir.

72 x-Q. Do you expect to be paid for such service? A. Yes, sir.

73 x-Q. Have you done any other detective service for Wyckoff, Seamans & Benedict besides that concerning which you have already testified? A. Yes, sir.

74 x-Q. What has been the nature of such service? A. I decline to answer.

542

75 x-Q. In your answer to question 38 you state that Mr. Seddon told you "Mr. Remington and Mr. Sholes were the original inventors of the Remington typewriter." Now, are you positive that Mr. Seddon did not say that they were the sons of the original inventors of the Remington typewriter? A. Yes, sir.

76 x-Q. Did he not say to you that Mr. Remington was a son of the original owner of the Remington typewriter? A. No, sir.

77 x-Q. Did he not say to you that Mr. Sholes was the son of the inventor of the original Remington typewriter? A. No, sir.

78 x-Q. Did he say anything to you about the father of either Mr. Remington or Mr. Sholes? A. No, sir. 543

79 x-Q. In the memorandum from which you refreshed your memory while giving your direct testimony I find that you have written the following as being information given to you by Mr. Seddon: "And that Mr. Remington is a man of remarkable executive ability, and that he, Remington, is one of the original owners and inventors of the Remington typewriter, also is Mr. Sholes"; the words, "and inventors," were inserted after the memorandum was

544 written, were they not, as they appear in manuscript and above the line? A. Yes, sir.

80 x-Q. The memorandum from which you refreshed your memory during your direct-examination comprises five and a half pages of typewritten legal cap paper, and is addressed to Mr. Thomas F. Crean, and is signed with your name. What was this memorandum intended for? A. It was intended to impart the information therein contained to the party addressed.

81 x-Q. Why did you not accept the agency for the sale of Rem Sho typewriters? A. Because I couldn't arrive at an amicable arrangement with the Remington-Sholes Company.

545 82 x-Q. Did you make any notes of your conversation with Mr. Seddon concerning which you have testified? A. When?

83 x-Q. I mean prior to the time when you made your typewritten report to the representative of Wyckoff, Seamans & Benedict? A. No, sir.

84 x-Q. I hold in my hand a letter dated Hartford, Conn., November 16, 1898, addressed to the Remington Sholes Company, 341 Broadway, New York, and signed Walter Montgomery Scheumaker, in which letter the following language occurs: "I have now seriously discussed the matter, and will say, that if you will give me a written agreement to the effect that after I demonstrate my selling abilities,
546 and I deem it a wise course to give up my present business and go into the typewriter business entirely, you will give me the control of the whole State and I can establish offices where I deem it advisable, and where I can wage a most successful war against the 'trust' which you are so determined to fight, and which I am just aching to do myself—I have a few personal affairs to settle myself, and it would do me more good than a bushel of medicine to clear them out of this city, or worry them a good deal, by placing a machine superior to theirs in the hands of concerns which they are bleeding continuously; you may send me one your machines on a thirty

(30) day trial, as per the offer of your Mr. Seddon when here, I to pay for it at the end of that time or return the machine—and you can rest assured that after I give the machine a thorough trial you will be sent a check therefor; and I will immediately take up the agency here and begin the campaign against the 'trust.'" * * * "Write me a letter giving me a history of the typewriter. Write me a letter giving me a history of the 'Rem-Sho' and say as to whether I can advocate this machine as the only 'Remington,' and that the machine known as the 'Remington Standard' is not the Remington—that is, the original Remington. Give me all facts and figures, and if we don't show the 'trust' that we are the 'people' in this section, we'll go out of business. I am just itching to get down to business—your machine I feel has come to stay—it is built on sound principles—like sound money—it has a solid foundation—and an effect for every cause, and a reason for every cause—this is the machine for me." * * * "Hoping to hear from you favorably, gentlemen, by return of mail, and for the long life and success of the 'Remington-Sholes,' I am, dear sirs, yours very truly, Walter Montgomery Scheumaker." 547 548

Please examine this letter and state if you have ever seen it before, to whom and by whom it was written and whether the quotations made in this question are correct or not? 549

Complainant's counsel objects to the question as incompetent and improper, first, because it relates to new matter and to matter not growing out of or relating to the examination in chief; second, because it is not competent or proper to interrogate the witness as to the contents of a letter and as to a quotation therefrom in the first instance as the counsel has done, but the witness should be shown the letter simply and asked whether or not he wrote such letter. Counsel protests against the record's being un-

550 necessarily encumbered by quotations from letters, as the letter, if admissible at all, should, after being identified and the signature thereto proven, be put in evidence and allowed to speak for itself.

A. I have seen this letter before. It was written to the party addressed, written by the writer, that is to say, the one whose signature appears at the end. Yes; the quotations are correct.

85 x-Q. Did you write that letter?

Same objection.

A. Yes, sir.

551 Counsel for defendant offers in evidence the letter referred to in the last preceding two or three questions and the same is marked "Defendant's Exhibit Scheumaker Letter, Nov. 16, 1898."

Complainant's counsel objects to said letter as incompetent and improper, because it does not grow out of or relate to the examination in chief.

86 x-Q. I call your attention to a letter dated Hartford, Conn., September 17, 1898, addressed to Messrs. Page, Dennis & Co., 341 Broadway, New York City, N. Y., and signed W. M. Scheumaker, and ask you to state whether you have ever seen
552 such letter before, by whom such letter was written and whether the signature at the end of such letter is yours or not?

Question objected to as incompetent and improper, because it calls for new matter not relating to or growing out of the examination in chief.

A. I have. This letter was written by me. The signature is mine.

87 x-Q. In this letter I find the following language: "Confident that I would receive the reply from you by the 10th inst. and also the advertising

matter, I went right ahead and drummed up several 553
people in town, and among them the secretary of another insurance company in town using quite a number of machines, and secured the promise of an order, and I told him that I would undoubtedly hear from you in a very short time, and, as they were in a hurry for the machine, would order it right away for them; time flew on and your answer came not, and on the 15th he came to me and said that it was imperative that they have the machine right away, so I reluctantly turned the order over to the Remington people here in town. I did this because as yet I have no authority to take orders in this territory." Please state whether or not it is true that you secured the promise of an order or drummed up 554
business for the Rem-Sho typewriter, and, if so, give the name of the secretary of the insurance company to whom you refer in your letter?

Same objection as the last one.

A. I decline to answer.

Counsel for complainant says he instructs the witness to answer the question, if he can do so.

A. No, I had not secured an order from any secretary of an insurance company at that time, nor had I seriously solicited any party or parties with a view to effecting a sale of this so-called Remington-Sholes, or Rem-Sho typewriter. 555

Counsel for defendant offers in evidence the letter referred to in x-Q. 86, and the same is marked "Defendant's Exhibit Scheumaker Letter of Sept. 17, 1898."

Objected to as incompetent and improper, because said exhibit relates to matters not growing out of the examination in chief and is new matter.

88 x-Q. You have produced and there has been introduced in evidence several letters addressed to you

upon letter sheets bearing the letter heading of the "Rem-Sho Typewriter." Have you produced all the correspondence that passed between you and Page, Dennis & Co., or the Remington-Sholes Company? A. No, sir.

89 x-Q. At the time of your interview with Mr. Seddon did he show you any circulars or catalogues such as the agents of the Remington-Sholes Company were using, or such as you would use if you undertook such agency? A. Yes, one.

90 x-Q. Have you such catalogue in your possession? A. No, sir.

91 x-Q. What did Mr. Seddon show you in the way of material to be used by agents in connection with the sale of machines? A. To the best of my recollection, it was a sheet upon which was a schedule giving the prices to be allowed in exchange for new machines of the so-called Remington-Sholes manufacture for competitor's machines.

REDIRECT-EXAMINATION by Mr. Donnelly:

92 RD-Q. What did you do with all of the letters which you received in the course of your correspondence with Page, Dennis & Co. and with the Remington-Sholes Company? I mean the original letters? A. Upon request I forwarded them through the mail to Thomas F. Crean, 327 Broadway, New York City, N. Y.

93 RD-Q. Have you seen any of such original letters other than the three which have been shown you and which you have identified since you forwarded all of said original letters as stated in your last answer? A. I have not.

94 RD-Q. Did you ever, as a matter of fact, take the agency for the sale of the so-called Remington-Sholes typewriter? A. No, sir.

95 RD-Q. Was the object of your correspondence with Page, Dennis & Co., and with the Remington-Sholes Company and your interview with Mr. Seddon, for the purpose of obtaining information as to

the manner in which they were selling or offering for sale the so-called Remington-Sholes machine? A. Yes, partially. 559

96 RD-Q. And that information you sought to obtain at the request of Mr. Crean? A. Yes, sir.

97 RD-Q. When Mr. Crean spoke to you about obtaining this information, did he, or not, inform you that Wyckoff, Seamans & Benedict claimed that the Remington-Sholes Company and its selling agents were infringing upon the rights of Wyckoff, Seamans & Benedict by the use of the name "Remington," or that in substance?

Counsel for defendant objects to the question as manifestly leading and improper.

560

A. Yes, emphatically.

98 RD-Q. Did he, or not, also inform you that a suit was contemplated for the use of said name "Remington"?

Same objection.

A. Yes, he did.

99 RD-Q. I notice in your letters which have been referred to by defendant's counsel, and a portion of one of which has been quoted upon the record, the word "trust" is used and reference made to the trust in your letter. Did Mr. Seddon in his interview with you at the time you have mentioned refer to the so-called trust? A. Yes, vituperatively.

561

100 RD-Q. And did your letters or letter have any reference to his use or suggestion of the term trust? A. Yes, sir.

RECROSS-EXAMINATION by Mr. Fisher:

101 Re x-Q. Did you understand to whom the word "trust" applied as used in your correspondence that has been introduced in evidence? A. Yes, I think so.

102 Re-x-Q. And you understood this without any coaching from Mr. Seddon, did you not? A. Yes, sir.

562 103 Re-x-Q. Who did you understand to be meant by the "trust"? A. I didn't understand; I inferred that the "trust" referred to by said Seddon was the typewriting companies known as the Remington Typewriter Company, that is to say, Wyckoff, Seamans & Benedict, Smith Premier Typewriter Company, Densmore Typewriter Company and the American Writing Machine Company that manufacture the Caligraph.

104 Re-x-Q. So far as you know, these are all the concerns that comprise the so-called typewriter trust, are they not? A. As far as I am aware.

REDIRECT EXAMINATION:

563 105 RD-Q. I suppose you know nothing about the so-called typewriter trust except what you have heard or information that has been imparted to you by others than those who are connected with the companies whose names you have mentioned, is such the fact? A. Yes, sir.

W. M. SCHEUMAKER.

Adjourned to Saturday, April 29, 1899, at 11 A. M.

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NEW YORK, April 29, 1899, 11 A. M.

564 Met pursuant to adjournment.

Present—Counsel as before.

BYRON A. BROOKS, called as a witness on behalf of the complainant, being duly sworn, testifies as follows:

By Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Byron A. Brooks; age, 52; residence, 314 McDonough street, Brooklyn; occupation, inventor.

2 Q. Have you ever given any attention to the

typewriter art and to the making of improvements therein, and if so, state briefly your connection therewith? 565

Counsel for defendant objects to the question, as the matter called for has no bearing upon the issues in this case.

A. I have been connected with the typewriter art almost from the beginning, and have been acquainted intimately with the history and progress of the Remington typewriter since 1874.

3 Q. What portion of your time have you devoted to the typewriter art since 1874?

Same objection. 566

A. I have been in close touch with the business all the time, and I have made it my business to be informed as to the character of nearly all the machines that have appeared. I should say, I spent about half of my time in making and developing inventions connected with typewriters.

4 Q. Have you or not devoted any attention to the matter of the sale of typewriting machines in the market so as to know anything concerning the manner in which they are sold, or have been sold? A. I have, particularly as to the Remington machine, because it was manufactured under a patent of mine.

5 Q. I call your attention to United States Letters Patent No. 202,923, dated April 30, 1878, and ask you to look at the same and say whether or not you are the Byron A. Brooks whose name appears therein? A. I am. 567

6 Q. About when, according to your recollection, did the concern hitherto known as E. Remington & Sons put typewriting machines upon the market? A. A typewriter manufactured by E Remington & Sons was put upon the market in New York, in 1874.

7 Q. Did you see such machines upon the market in New York at that time? A. I did.

568 8 Q. By what name, if any, were such machines designated, if they were called by any name, to your knowledge? A. The machine was called "The Typewriter," or the Sholes & Glidden Typewriter, manufactured by E. Remington & Sons.

9 Q. For how long a period, according to your recollection, did E. Remington & Sons put typewriting machines upon the market, or sell the same, under the name of The Typewriter, or the Sholes & Glidden typewriter? A. I should say that the machine was sold under the name of The Typewriter until about 1879 or 1880, when other machines began to come upon the market, and this was then called the Remington to distinguish it from other ma-
569 chines.

10 Q. Since 1880 have you been familiar with the typewriting machines which have been put upon the market and sold in the market by E. Remington & Sons and by its successors, the Standard Typewriter Manufacturing Company, the Remington Standard Typewriter Manufacturing Company, and by Wyckoff, Seamans & Benedict? A. I have.

11 Q. If you know, please state how such machines have been known and designated in the market by users and purchasers of such machines? A. They have been known as the Remington typewriter or the Remington No. 2.

12 Q. Have the later models been designated in
570 any way by other numerals than No. 2? A. They have been known, I believe, as Remington No. 5, No. 6 and No 7.

13 Q. In your experience and from your observation have you ever known the Remington machine to be designated or spoken of by any abbreviated term?

Counsel for defendant objects to the question as leading.

A. I have often heard operators and salesmen speak of it as the Rem. or a No. 2 Rem. when asked what machines they were using.

Counsel for defendant moves to strike out the witness' answer as immaterial, irrelevant and incompetent. 571

14 Q. Do you know to what extent the Remington machine, or Remington typewriter has been used, and whether the extent of its use has been greater or less than that of other typewriting machines in the market? A. I understand that over one hundred and fifty thousand Remington No. 2 machines were sold prior to 1894, and I should say that more Remington typewriters have been sold than of all other makes combined.

15 Q. What kind of a reputation has the Remington typewriter borne among purchasers and users, as regards quality and efficiency? A. It has generally been considered the best all round machine for practical use and other machines as they came along have been compared with it as the standard, generally to their disadvantage. 572

16 Q. Have you ever seen and examined a typewriting machine which is now upon the market and called the Remington Sholes or Rem-Sho typewriter? A. I have.

17 Q. When did you first see a machine like or substantially like the present so-called Remington-Sholes typewriter, and under what circumstances did you see or examine such machine, if you did see it or examine it? A. I think I first saw the machine in the fall of 1892. The parties who had the business in charge were then negotiating with me for the use of a patent. Subsequently in the winter of 1893, that is, in February or March, a machine was brought to New York by Z. G. Sholes and a man named Smith, who wished to interest Mr. C. M. Fowler in the machine, who was then organizing a combination of typewriter companies, and he requested me to examine the machine and report upon it to him, which I did at that time. 573

18 Q. Was the machine which you then examined in its structure and mode of operation like or unlike

574 the so called Remington-Sholes, or Rem-Sho machine, now upon the market?

Objected to as incompetent, irrelevant and immaterial.

A. In its essential features, it was substantially the same. It had the shifting basket and the same general appearance.

19 Q. Do you know whether that machine, at the time you first saw it, or at the time you examined it in New York in 1893, as you have stated, was designated or called by any particular name, and if so, state what name was applied to it?

Same objection.

575 A. It was called the Sholes typewriter.

20 Q. Did you, at the time you examined it, learn, or were you informed by anybody, who was the inventor of the novel features in that machine;

Same objection.

A. I was told it was the invention of Z. G. Sholes, and was called after his name.

21 Q. Do you remember from whom you learned that fact, and, if so, state? A. I first learned it from the man representing Mr. Sholes, who came to negotiate with me about a patent and I was afterwards told the same by Mr. Sholes.

22 Q. Have you recently visited the City of St.
576 Augustine, Florida? A. I have.

23 Q. When did you visit that city and how long a time did you remain there and what was the object of your visit? A. I went there on a pleasure trip on the 8th of March last and remained there about ten days.

24 Q. During the time you were there did you make any investigation for the purpose of ascertaining whether there was at that time a newspaper published in that city under the name *The Daily Herald*, and, if so, you may state what investigation you made and the result of your investigation? A. I inquired at the hotel where I was stopping if

such a paper was published there daily and was informed that there was, that it was received there every morning. I inquired as to the office of the paper and went there and saw the editor of the paper and found the paper was regularly published there. 577

25 Q. Did you ascertain whether or not this so-called *Daily Herald* was circulated in the City of St. Augustine and vicinity, or did you see any copies of it in public places? A. Yes, I saw copies and bought them of the newsboys.

26 Q. I now show you a copy of a newspaper purporting to be the *Daily Herald*, St. Augustine, Florida, Monday, January 23, 1899, and request you to examine the same and say whether or not you have ever seen said paper before and what you know concerning the origin of that particular copy of the paper? A. I purchased the copy of this paper at the office of the paper in St. Augustine in March last, and brought it with me. 578

The copy of the *Daily Herald* of January 23, 1899, which has been shown to and identified by the witness is offered in evidence and the same is marked "Complainant's Exhibit St. Augustine *Daily Herald*, No. 1."

Counsel for defendant objects to the introduction of the exhibit in evidence for the reason that it is incompetent, irrelevant and immaterial, for the further reason that if said exhibit is relied upon to show anything material to the issues in this case, it has not been proven that such was made by any one having authority from the defendant in this cause, or from the Remington-Sholes Company to make the same, nor has it been shown that any matter appearing in said publication was by the authority or consent of the defendant herein or of the Remington-Sholes Company. 579

Complainant's counsel also offers in evidence a copy of the same newspaper of date February 10, 1899, in which the same advertisement ap-

580 pears, that is to say, an advertisement "of the Remington-Sholes Standard Typewriter," and the same is filed in evidence and marked "Complainant's Exhibit St. Augustine *Daily Herald*, No. 2."

Same objection as to the introduction of the preceding exhibit.

Complainant's counsel also offers in evidence another copy of the *Daily Herald* of date February 8, 1899, containing a similar advertisement, and the same is filed in evidence and marked "Complainant's Exhibit St. Augustine *Daily Herald*, No. 3."

Same objection as to the introduction of the
581 preceding exhibit.

Counsel for defendant, without waiving his objection to the introduction of the three above mentioned exhibits, is ready to stipulate and does stipulate that if said exhibits are admissible, notwithstanding his objection, then that said newspapers were severally published at St. Augustine, Florida, and circulated there upon the several respective dates printed upon said papers.

Counsel for defendant, without waiving his objection to the introduction of the exhibit newspapers offered in evidence, admits that if said newspapers are properly admissible in evi-
582 dence, then that said William Carcaba, whose advertisement appears in said newspapers, has offered for sale the Remington-Sholes typewriter, and that said Carcaba inserted said advertisements in said newspapers, but denies that said advertisements were published under any authority from, or with the sanction or knowledge of, either the defendant in this cause or the Remington-Sholes Company.

27 Q. At the time you called at the newspaper office what inquiry, if any, did you make of the editor or person whom you saw concerning the adver-

tisement of Carcaba in the paper, and what, if any, was the reply? 583

Objected to as immaterial, irrelevant and incompetent.

A. I asked the editor of the paper if he was publishing any advertisement of a typewriter. He said, "You mean the Remington?" I said "I don't know; I'd like to find out what machine is advertised and who is doing it." "Oh," he says, "that's Carcaba." Then he gave me his address.

28 Q. Did you afterwards call upon Mr. Carcaba at his office or place of business? A. I did.

29 Q. Did you see any typewriting machine there or any advertising media of any kind? A. I called 584 at the office of Mr. Carcaba, who was a cigar manufacturer, and I saw a placard on the wall of the Rem-Sho typewriter, and saw a Rem-Sho machine there and a circular describing the machine.

30 Q. Did you make any inquiry of Mr. Carcaba as to the manner in which he was selling the machine, whether as agent or otherwise?

Objected to as immaterial, irrelevant and incompetent.

A. I asked Mr. Carcaba what machine he was selling. He said he was selling the Rem-Sho machine, which was an improved Remington machine, invented by the son of the inventor of the Remington 585 typewriter, who had associated with him Mr. Sholes of Chicago. I asked him if he was agent for the machine and he said he was, he was agent for the company in Chicago. I asked him if he inserted that advertisement in the *Augustine Herald* and he said he did. I asked him particularly if he was a dealer or an agent and he said he was an agent and bought his machines direct from the company in Chicago.

Counsel for defendant moves to strike out the answer for the reason that the declarations of

586 the alleged agent are not competent to prove such agency, much less to prove the extent thereof.

31 Q. Did you inquire of Mr. Carcaba or did he say anything about having submitted said advertisement to any one before he inserted it in the newspapers, and if so, please state the name of the concern that he mentioned?

Same objection.

A. Mr. Carcaba said that before he inserted the advertisement he had submitted it to the company and they approved of it and authorized him to insert it. I asked him who he meant by the company and 587 he said the Company in New York; I think it was Page, Dennis & company.

Counsel for defendant moves to strike out the answer for the same reasons as given with respect to the last preceding answer.

CROSS-EXAMINATION by Mr. Fisher:

32 x-Q. What are your relations to the complainant in this cause? A. I have no relations with them.

33 x-Q. Are you a stockholder in the complainant corporation? A. I am not.

34 x-Q. Are you a stockholder in any typewriter company or employed by any typewriter company? 588 A. I am a stockholder in the Union Typewriter Company and employed by them.

35 x-Q. Does the Union Typewriter Company manufacture typewriting machines? A. I think not; not to my knowledge.

36 x-Q. The Union Typewriter Company is a syndicate or so-called "trust," is it not, consisting of various typewriter companies? A. I believe it is.

37 x-Q. State what typewriter companies are comprised in said syndicate or "trust" under the name of the Union Typewriter Company?

Complainant's counsel objects to the question as immaterial and irrelevant and as incompetent because the question calls for secondary evidence. If there is any so-called "trust," the best evidence of the fact is the documentary evidence or articles of association of the Union Typewriter Company and of the other companies alleged to be in said so-called "trust," and it is not competent to introduce secondary evidence thereof until it is first shown that the best or primary evidence cannot be obtained, also that the evidence is immaterial, irrelevant and improper under the pleadings in this case, and that the question of a "trust" or no "trust" is not an issue in this case and is apparently lugged into it as a make-weight for the purpose of exciting some prejudice on the part of the Court. 589 590

Counsel for defendant replies that the question is entirely proper as a means of showing that the witness is not entirely disinterested.

A. I understand that it includes the firm of Wyckoff, Seamans & Benedict, the Smith Typewriter Company, the American Writing Machine Company, the Yost Typewriter Company and the Densmore Typewriter Company.

38 x-Q. In what manner are these several companies owned or controlled by said Union Typewriter Company? 591

The question is objected to by complainant's counsel as incompetent and improper because the question assumes that the Union Typewriter Company owns or controls the other companies mentioned, which is not the fact, the Union Typewriter Company being a mere stockholder in the other companies.

A. I do not know.

39 x-Q. You know, do you not, that the Union Typewriter Company owns stock in these several

592 companies that you have mentioned? A. I believe that is the case.

40 x-Q. And that the majority of the stock in each of said companies is owned by said Union Typewriter Company?

Complainant's counsel objects to the question as incompetent and improper because it calls for secondary evidence and not the best evidence, the books and records of the corporation being the best and the only competent evidence in the premises; also that the question is perfectly immaterial and irrelevant. The witness has already stated that he was a stockholder in the
593 Union Typewriter Company.

A. I don't know what the relations are between the Union Typewriter Company and the other companies that are connected with it.

41 x-Q. You know, do you not, that said Union Typewriter Company controls such other companies?

Same objection as last.

A. I don't know anything about it except as a matter of general information. I have never attended a stockholders' meeting nor had any information except what is generally understood.

42 x-Q. Is it not generally understood by the stockholders of the Union Typewriter Company that
594 said company controls the various other companies that you have mentioned, including Wyckoff, Seamans & Benedict, and is it also not understood by the stockholders that said Union Typewriter Company owns or controls a majority of the stock in each of said companies?

Same objections.

A. I think it is generally understood that these companies are combined in some way with the Union Typewriter Company, but in just what way I don't know. I couldn't say what is the general understanding of other stockholders.

43 x-Q. What is your own understanding in the matter? 595

Same objection, also that the question is improper because it calls for the "understanding" of the witness and not for his knowledge.

A. My understanding is that these companies are combined under one general management with one executive head, and that the profits of the business of all the companies in the combination are distributed through the Union Typewriter Company in the form of dividends on its stock. That's all I know about it.

44 x-Q. Were you ever a stockholder of Wyckoff, Seamans & Benedict or any of its predecessors? A. No, sir. 596

45 x-Q. Were you ever a stockholder of any of the companies that you have mentioned in your preceding answers? A. No, sir.

[RECESS.]

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46 x-Q. Your inventions have been extensively used by Wyckoff, Seamans & Benedict and its predecessors, have they not? A. They have.

47 x-Q. And you were paid royalty for the use of such inventions by them? A. No, sir.

48 x-Q. How were you recompensed, if at all, for such use of your inventions? A. I sold the patent to E. Remington & Sons at an early stage of the business. All the other inventions that I sold them were paid for; no royalty. 597

49 x-Q. Are you receiving royalty from any of the typewriter companies which you have mentioned in your preceding answers? A. No, sir.

50 x-Q. State, as near as you can recall, when E. Remington & Sons abandoned the use of the name Sholes & Glidden in connection with their typewriter? A. I don't think E. Remington & Sons ever

598 used the name. The machine was owned by a company called The Typewriter Company which was manufactured for them by E. Remington & Sons and the machine was put out in their circulars as "The Typewriter," invented by Sholes & Glidden, and manufactured by E. Remington & Sons, and this fact was emphasized in their circulars as a guarantee of excellence in the machine. I don't think the name "Sholes & Glidden" was used very much, and gradually disappeared, the name of Remington taking its place. I should say that after 1878 it was known only as the Remington typewriter.

51 x-Q. The machine manufactured by E. Remington & Sons and their successors has also been
599 known as the Remington Standard Typewriter, has it not? A. Yes, sir.

52 x-Q. Can you state positively, Mr. Brooks, that the first machine which you saw like the present Remington-Sholes typewriter was not marked with the words "Remington-Sholes"? A. I should say to the best of my knowledge it was not, and as I understood, Mr. Remington was not interested in it at that time or connected with it.

53 x-Q. During your conversation with Mr. Carcaba did he say anything to you as to whether he had been advised or requested by any one to modify or change the advertisement concerning which you talked with him? A. Yes.

600 54 x-Q. State what he said? A. He said he had been requested by the company in Chicago to modify his advertisement and had done so.

55 x-Q. Did he tell you in what respect he had been requested to modify his advertisement? A. No, he did not.

56 x-Q. Did he mention any particular caution or word of the advertisement that the Chicago Company had requested him to change? A. He did not.

57 x-Q. Did he show you a copy of any other advertisement than those introduced in evidence? A. He did not. I went to the office of the paper afterwards to see his advertisement and see what modifi-

cations he had made, if any, and the only paper I could get was the one which I submitted here. I couldn't find that any change had been made. 601

58 x-Q. Did not Mr. Carcaba in any manner indicate to you in what way he had been requested to change his advertisement, or why it was objectionable to the parties who had requested such change? A. He did not, but he seemed to be quite indignant that they had requested him to change it after it had been approved.

Counsel for defendant moves to strike out the last part of witness' answer as not responsive.

REDIRECT EXAMINATION by Mr. Donnelly:

59 RD-Q. Please examine the booklet or catalogue which I now show you and say whether or not you saw any printed matter like the catalogue or circular shown you at the time you visited Mr. Carcaba's place of business? A. I think this is the circular he showed me. 602

The circular shown the witness and referred to by him in his answer is marked for identification "Carcaba-Brooks Circular."

BYRON A. BROOKS.

HOWARD SPELMAN, called as a witness on behalf of the complainant, being duly sworn, testifies as follows: 603

By Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Howard Spelman; age, thirty-two; residence, 206 Washington Park, Brooklyn; occupation, salesman for Wyckoff, Seamans & Benedict; that is among other things that I do for them.

2 Q. About how long have you been in the employ of Wyckoff, Seamans & Benedict? A. About five months.

3 Q. Have you at any time since entering into the service of Wyckoff, Seamans & Benedict canvassed

604 any offices or places of business in this city, and if so, for what purpose? A. Yes, and to see what the machine which Messrs. Wyckoff, Seamans & Benedict manufacture is designated as by the trade, by second-hand dealers, merchants and copy offices.

4 Q. When, if at all, did you make this canvass for the purpose mentioned in your last answer? A. In December, 1898 and January, 1899.

5 Q. In what city or part of the city, if any, was your canvass made? A. In New York, both uptown and downtown and in the business section of Brooklyn.

6 Q. How many offices and places of business did you visit? A. One hundred and one.

605 Q. What inquiry, if any, did you make at the offices and places of business which you visited? A. At the second-hand dealers I said, "I wish to buy a second-hand typewriter for about $50.00; what can you show me?" They then showed me machines which I knew to be made by Wyckoff, Seamans & Benedict and said, "Here is a Remington" or "Do you wish a Remington?"

8 Q. How many second-hand dealers in typewriting machines did you visit and make the inquiry which you have stated in your last answer? A. Twelve.

9 Q. Where were those offices, that is, offices of second-hand dealers, located? A. Most of them
606 were on Broadway, one was in Barclay street, two were in Fulton street, one was in Maiden lane.

10 Q. Were all of those offices, that is, offices or places of business of second-hand dealers in typewriting machines, located in the Borough of Manhattan? A. I believe they were.

11 Q. Did you in reply to your inquiry at each of these offices or places where second-hand typewriters were sold receive a response or reply to your inquiry as you have above stated? A. In words to exactly that effect.

12 Q. What other places besides second-hand dealers in typewriting machines did you visit in the City of

New York, what inquiry did you make, if any, and what reply, if any, did you receive to your inquiry? A. I visited merchants and manufacturers and asked in the course of other conversations, "What typewriter do you use here"? The answer was "Remington," or "the Remington." 607

13 Q. How many such places did you visit, that is, offices or places of business other than second-hand dealers of typewriters, where it was stated to you that they used a "Remington" or "the Remington"? A. Eighty-nine.

14 Q. At any of these offices or places of business other than second-hand dealers which you visited and in which they stated they used a Remington, or the Remington did you see any typewriting machine or machines? A. I saw a machine or machines in all of the places referred to. 608

15 Q. State, if you know, whose make of machines they were? A. I know that they were made by Wyckoff, Seamans & Benedict.

16 Q. In making this canvass what method did you pursue, if any, as regards making any notes or memoranda of the places you visited or what was asked or said? A. In case of the second-hand dealers I always asked the same question in the same way and made notes of their answer almost immediately after leaving their shops. In case of the manufacturers and merchants the same. In case of the copy offices the answer to the question was practically the same. 609

17 Q. In what, if anything, did you make your memoranda of the various places you visited and the responses you obtained to your inquiry? A. In a note book which I carried in my pocket.

18 Q. Have you the original note book in which your memoranda was entered? A. I have the original book.

19 Q. Will you produce your original memoranda? A. That is it, sir (handing book to counsel).

Cross-examination waived.

HOWARD SPELMAN.

610 WALTER J. BARRON, called as a witness on behalf of the complainant, being duly sworn, testifies as follows:

By Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Walter J. Barron; age, fifty-two; residence, Brooklyn; occupation, inventor.

2 Q. What experience and connection have you had with making improvements in typewriting machines, and what attention have you given to the typewriter art? A. I engaged actively in the invention and making of typewriter machines in 1871, and have been engaged almost continuously in that
611 business in making, inventing and selling typewriters up to the present time.

3 Q. What connection or association did you have, if any, with the development and construction of the typewriting machine which was called The Typewriter or the Sholes & Glidden typewriter? A. I helped make the first machine known as the carriage machine. Another one made afterwards like it was taken to the Remington Armory, at Ilion, New York, in the early part of 1873, and what is now called, and has been called for the past twenty years, the Remington typewriter was made after some of the inventions shown in that model, although the first machine made by the Remingtons
612 would not have been recognized as a similar machine. There were a great many changes made in the Remington as turned out and the Sholes-Glidden-Schwalbach Barron model which was taken to the armory.

4 Q. About when was the model mentioned by you in your last answer, or one like it, taken to the Remington Armory for manufacture, or for the purpose of improvement, with a view to manufacture it? A. It was either very late in 1872 or early in 1873.

5 Q. After the machine was taken to the armory or factory at Ilion, was it improved in any way or

changed or developed, and did you in any way assist in developing it or making improvements in it? A. It was very much changed, and as I said before, the new machine looked but very little like the model which we sent there and from which it was made, and I spent several months at Ilion in making improvements on the model. The type-bearing system was entirely changed; the model which was taken there was not furnished with adjustable hangers for the type bars; the type bars were hung in a solid disk, and were not capable of adjustment; the ribbon movement was entirely changed; the model taken there was a very crude affair, about twice as large as the present Remington typewriter, had wooden covers and rough castings. It was not a commercial machine nor were any of the models made at Milwaukee commercial machines. All that were sold, so far as I know, were sold with the understanding that when the typewriter was perfected a new model perfected machine would be given in exchange for the old machine first sold. 613 614

6 Q. Did you work on the original models at Milwaukee? A. I did, both on the original models of the so-called axle machine which was made before what was called the paper carriage machine was made. On the former machine, the paper was wrapped around the cylinder which turned when the keys were struck and the whole page was written without once drawing the cylinder back to the starting point. This was an objection for some kinds of work, because a narrow sheet of paper could not be written upon, and it was thought advisable to construct a machine which would write any length of sheet and any desired width up to a certain point. 615

7 Q. Speaking from your own knowledge, what do you say as to whether or not C. Latham Sholes was the inventor of all the improvements embodied in the original models or in the Sholes & Glidden machines, or in the Remington machine as it was afterwards called and manufactured at Ilion? A.

616 Mr. Sholes was not the original inventor or never claimed to be the sole inventor of the typewriter.

8 Q. Is it or not a fact that the original models of the Sholes & Glidden machine and the Remington machine, so called, were the product of several inventors?

Counsel for defendant objects to this and all similar questions as having no bearing whatever upon the matters at issue in this cause.

A. It is.

9 Q. After E. Remington & Sons began the manufacture of typewriting machines and to place the same upon the market, by what name, if any, were
617 such machines called or designated? A The Sholes & Glidden typewriters first and after, I think about 1878 or 1879, the name was changed to the Remington typewriter.

10 Q. Speaking from your own knowledge and recollection, state whether or not the Sholes & Glidden typewriter, afterwards called the Remington typewriter, was for a period of time the only typewriting machine manufactured and sold in the market? A. To the best of my knowledge it was.

11 Q. About what time, so far as you remember, did any other competing typewriting machine come into the market? A. I think the Hall typewriter came in about 1878 or 1879, but it was not considered
618 a competing machine with the Remington. About 1880 the Caligraph was put on the market by the American Writing Machine Company. When Mr. Yost first talked of putting the Caligraph on the market, he and James Densmore had a conversation at which I was present and they decided that the name of the Sholes & Glidden typewriter should be called the Remington in contradistinction to the Caligraph for the reason that the name Remington was known the world over owing to their building guns for foreign governments, building sewing machines and having one of the largest manufacturing works in the world.

12 Q. When was that conversation and decision made to which you allude in your last answer, that is, in about what year? A. That was about, I think, in the latter part of 1877, or the spring of 1878. 619

13 Q. State briefly what James Densmore's relations were at that time to the so-called Sholes & Glidden typewriter and to the manufacture thereof by E. Remington & Sons? A. James Densmore, I think, was trustee of the Typewriter Company and the largest owner of the capital stock of said company. Previous to the conversation I mentioned the people connected with the typewriter business in New York spoke of the machine as the Remington machine.

620

14 Q. After the machine which was manufactured by E. Remington & Sons was called, as you say, the Remington typewriter, was there any change in the name or designation during the time that E. Remington & Sons manufactured it, and was there any change after their successors began to manufacture it and up to the present time? A. To the best of my knowledge, it has been called the Remington typewriter ever since that time and has been known to the public as the Remington typewriter. After the Caligraph was put on the market it was frequently designated by operators and salesmen simply as the Rem, and when the word "Remington" was used it was intended to convey the idea simply a Remington typewriter. 621

15 Q. How extensively, to your knowledge, has the Remington machine been used and sold as compared with other machines which have been upon the market? A. To the best of my knowledge there are more Remington typewriters sold than of all other machines combined.

16 Q. Speaking from your own knowledge, observation and experience, what do you say as to quality and efficiency of the Remington typewriter? A. I think it is, without doubt, the best machine on the market to-day.

622 17 Q. Have you ever heard the concern known as Wyckoff, Seamans & Benedict, or the predecessors of that concern, the Remington Standard Typewriter Manufacturing Company, designated by any other name or referred to by any other name or names, and if so, what? A. I have heard of those companies and have heard them generally referred to as the Remingtons, and the Remington people and the Remington office. I always referred to them that way myself in sending orders to them or messengers.

18 Q. Have you ever heard of a concern known as the Remington-Sholes Company? A. I have heard of such a company.

623 19 Q. Have you ever seen or examined a typewriting machine which is called the Remington-Sholes or Rem-Sho typewriter? A. I have.

20 Q. Prior to the time when this Remington-Sholes or Rem-Sho typewriter was placed upon the market, had you ever known or heard of a typewriting machine other than that manufactured by E. Remington & Sons and its successors which was designated or sold or called the Remington typewriter? A. I had not.

CROSS-EXAMINATION by Mr. Fisher:

21 x-Q. The Mr. Sholes to whom you have referred
624 in your direct-examination was C. Latham Sholes, was he not? A. He was.

22 x-Q. Can you state whether or not he was the father of Zalmon G. Sholes, the party of that name who was connected with the Remington Sholes Typewriter Company? A. He was.

23 x-Q. It is true, it is not, that Mr. C. Latham Sholes was recognized as an inventor of very important features of the modern typewriting machine as such machine was put upon the market by E. Remington & Sons? A. It is true, to the best of my knowledge, that he was recognized as an inventor of some important features of that machine,

but not true, to my knowledge, that he was the inventor of very important features. I think he was recognized as the inventor of some very important features of the original model. 625

24 x-Q Is it not a fact that the machine manufactured by E. Remington & Sons was marked with the name "Remington Standard Typewriter" and was designated as the Remington Standard Typewriter? A. I don't remember that the machine was marked that way; it may have been, but I do not remember now of having seen that name of the machine. I have heard it designated as the Remington Standard Typewriter, or rather I have never heard it called the Remington Standard typewriter, I have seen it in print.

626

25 x-Q. That is the name by which such machine has been commonly advertised, it is not? A. I don't know that it has been commonly advertised as such, but I have seen it advertised as such at sometimes, but I never heard any one speak of the machine itself as the Remington Standard typewriter. It was either simply the Remington or the Remington typewriter.

26 x-Q. You have heard it called the Remington Standard, have you not? A. To the best of my knowledge, I never have.

WALTER J. BARRON.

Adjourned to Monday, May 1, 1899, at 10.30 A. M. 627

628 NEW YORK, May 1, 1899,
10.30 A. M.

Met pursuant to adjournment.

Present—Counsel as before.

ROBERT MCKEAN JONES, called as a witness on behalf of the complainant, being duly sworn, testifies as follows:

By Mr. Donnelly:

1 Q. State your name, age, residence and occupa-
629 tion? A. Robert McKean Jones; age, forty-four; residence, Hackensack, New Jersey; occupation, manager of the advertising department of Wyckoff, Seamans & Benedict.

2 Q. How long have you been in the service of Wyckoff, Seamans & Benedict? A. Nine years.

3 Q. Did you enter the service of Wyckoff, Seamans & Benedict when it was a firm and before it became a corporation? A. Yes.

4 Q. When you first entered the service of Wyckoff, Seamans & Benedict, what concern or company, if any, manufactured the typewriting machines which were handled by Wyckoff, Seamans & Benedict? A. The Remington Standard Type-
630 writer Manufacturing Company.

5 Q. And by whom were the sales of the machines made, or through whom? A. Through Wyckoff, Seamans & Benedict.

6 Q. During the time you have been in the service of Wyckoff, Seamans & Benedict as a firm and afterwards as a corporation, what have been your duties as regards the business of those concerns? A. Principally and for the greatest time in charge of the advertising department.

7 Q. During the time that you have been in the service of Wyckoff, Seamans & Benedict as stated, have you been familiar with the extent to which the

machines sold by said firm and corporation have been advertised and the character of their advertisements of their business and machines? A. I have. 631

8 Q. To what extent has the business and the machines manufactured by Wyckoff, Seamans & Benedict and by their predecessor, Remington Standard Typewriter Manufacturing Company, been advertised, and where have the same been advertised in newspapers and other publications and by means of catalogues, circulars, &c.? I refer to the period during which you have been connected with the business of Wyckoff, Seamans & Benedict? A. They have been very widely advertised in all parts of the world. Very extensively through the United States, also in England, France, Germany, Sweden, Denmark, Norway, Russia, Austria, Italy, Spain, Egypt, India, Strait Settlements, various parts of China, Japan, Australia, New Zealand, Mexico, various parts of Central and South America, South Africa, the Hawaiian Island, Cuba, Porto Rico, Malta, also in Ireland and Scotland. 632

9 Q. Are you sufficiently familiar with or have you made any investigations which will enable you to speak approximately as to the amount of money which has been expended in advertising the business and typewriting machines of Wyckoff, Seamans & Benedict during the period of your service with that concern? A. I am perfectly familiar with the advertising expenditures as they are made under my direction and have made an approximate estimate of the total amount expended by Wyckoff, Seamans & Benedict since the organization of the firm. 633

10 Q. Will you please state about how much has been expended in advertising the machines and business of Wyckoff, Seamans & Benedict since you first became connected with that concern? A. Upwards of five hundred thousand dollars, estimated.

11 Q. Have you made any investigation and are you able to state approximately the entire amount which has been expended in advertising the machines manufactured by Wyckoff, Seamans & Ben-

634 edict and by its predecessors? A. I have investigated the amount expended by the firm of Wyckoff, Seamans & Benedict and the corporation succeeding the firm.

12 Q. And what do you find to be the amount expended by the firm of Wyckoff, Seamans & Benedict during the period it was the selling agent of the machines manufactured by the Remington Standard Typewriter Manufacturing Company and since the corporation known as Wyckoff, Seamans & Benedict has both manufactured and sold the typewriting machines? A. Over one million dollars, exclusive of anything expended by their dealers or outside representatives.

635 13 Q. Have you caused any advertisements to be inserted in any newspapers within the past year for the purpose of ascertaining how the typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict are known or designated by users of typewriting machines or operators thereon?

Counsel for defendant objects to the question as incompetent, immaterial and irrelevant and as apparently calling for statements or publications made without the knowledge of defendant.

A. I have.

14 Q. Will you please state what advertisement
636 or advertisements you caused to be inserted in any newspaper or newspapers, in what newspapers they were inserted, and whether any replies to such advertisements were made and produce the papers, if you can, showing such advertisements and replies thereto?

Same objection.

A. I inserted an advertisement in the *New York World* of the 30th of December, 1898. It appears on page 11 of the issue of that date in the third column indicated by blue pencil on copy submitted herewith; also in the *New York Journal* of Decem-

ber 30, 1898, which appeared on page 13 of the issue of that date in the second column and is indicated by blue pencil in copy submitted herewith; and in the *New York Herald* of the 30th of December, 1898, which appeared on page 15 of the issue of that date in the third column distinguished by the initials "Q. J. T." as marked on copy submitted herewith; also in the *New York Herald* which appeared in the issue of the 1st of January on the sixteenth page, fourth column, as indicated by blue pencil mark on copy submitted herewith, and in the *New York Journal*, issue of the 1st of January, 1899, which appeared in the 51st page, third column, as indicated by blue pencil mark on copy submitted herewith. 637

15 Q. Are the papers which you have produced copies of the newspapers in which you caused said advertisements to be inserted? A. Yes, they are. 638

16 Q. Do you know whether the *Journal*, *World* and *Herald* are newspapers which are published in and about the City of New York and circulated in and about the City of New York and elsewhere? A. I do.

The advertisement for typewriter and stenographer contained in the *New York Journal*, *New York Herald* and *New York World* which have been produced and identified by the witness are offered in evidence and are marked "Complainant's Exhibit Jones Advertisements for Stenographer and Remington Operator." 639

17 Q. Did you or not receive any replies to said advertisements in said newspapers, and if so, will you or can you produce them?

Same objection as to Q. 13.

A. I received a number of replies and will produce them, and do produce them.

18 Q. Please examine the several replies or letters in answer to your inquiries which you now produce, and state whether or not the several letters, postal

640 cards, &c., which you produce are the ones which you received in answer to the advertisements in said newspapers? A. They are the ones which were so received.

The several letters, postal cards, &c., which have been produced and identified by the witness are offered in evidence and received and marked "Complainant's Jones Exhibit Answers to Advertisements for Stenographer and Typewriter Operators in the *Herald*, *World* and *Journal*," being eighty-eight in number.

19 Q. I now produce several copies of the publication known as the *Illustrated Phonographic World*,
641 and request you to examine the same and to say whether or not you find any advertisement in said several copies of typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict? A. I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict in each of the copies so produced.

20 Q. Do you know where and by whom the publication known as the *Illustrated Phonographic World* is published? A. Published in the City of New York by E. M. Miner.

21 Q. Where, and among whom is said publication circulated, to your knowledge? A. It is circulated extensively throughout the United States and
642 I believe to some extent in foreign countries chiefly among stenographers, typewriter operators and the students of those arts.

22 Q. State whether or not said publication, known as the *Illustrated Phonographic World*, was being published and circulated as you have stated at the time these several copies of said publication, which have been shown you, bear date? A. They were so published and circulated.

23 Q. Will you now please refer to these several copies of said publication and state upon what page or pages you find any advertisements of the typewriting machines manufactured by Wyckoff, Sea-

mans & Benedict, taking said several copies of said publication chronologically? A. In the issue of December, 1893, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on page 154; in the issue of January, 1894, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on page 188; in the issue of February, 1894, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on page 222; in the issue of March, 1894, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on page 248; in the issue of April, 1894, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on page 274; in the issue of May, 1894, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on page 300; in the issue of November, 1894, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the third cover page; in the issue of December, 1894, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the third cover page; in the issue of October, 1894, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the third cover page; in the issue of February, 1895, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the fourth cover page; in the issue of April, 1895, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the fourth cover page; in the issue of May, 1895, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the fourth cover page; in the issue of June, 1895, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the fourth cover page; in the issue of November, 1895, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the fourth cover page; in the issue of December, 1895, I find an advertisement of the machine manufactured by

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646 Wyckoff, Seamans & Benedict on the fourth cover page; in the issue of January, 1896, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the fourth cover page; in the issue of February, 1896, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the fourth cover page, and in the issue of March, 1896, I find an advertisement of the machine manufactured by Wyckoff, Seamans & Benedict on the fourth cover page.

24 Q. Were all of said advertisements in said *Phonographic World* to which you have just referred caused to be inserted therein by Wyckoff, Seamans & Benedict? A. They were.

647 25 Q. I call your attention to the *Illustrated Phonographic World* of October, 1894, and particularly to pages 40 to 42, inclusive, and ask you whether or not you find an article therein on said pages referring to any typewriting machine manufactured and sold by Wyckoff, Seamans & Benedict?

Question objected to as immaterial, irrelevant and incompetent, since the article in question, if it contains matter or statements relating to the questions at issue, is not properly proven and is secondary evidence.

A. I find on said pages an article descriptive of an improved model of typewriting machine manufac-
648 tured by Wyckoff, Seamans & Benedict.

The said several advertisements of Wyckoff, Seamans & Benedict's typewriting machines which appear in the copies of the *Illustrated Phonographic World* on the pages mentioned by the witness are offered in evidence and marked "Complainant's Jones Exhibit *Phonographic World*, Nos. 1 to 18," both inclusive.

26 Q. Can you produce, and, if so, will you produce any advertising media consisting of catalogues, circulars, &c., which are circulated by Wyckoff, Seamans & Benedict, or used in their business

wherein their machines are designated by the name of Remington or the Remington typewriter? A. I can and do produce herewith an assortment of such catalogues and other advertising media. 649

27 Q. Will you now please select from the advertising media which you have produced, catalogues circulars, &c., showing the manner in which the machines manufactured by Wyckoff, Seamans & Benedict are so advertised or designated?

Counsel for defendant desires to state upon the record that since the beginning of complainant's *prima facie* testimony he has repeatedly expressed to complainant's counsel a willingness to stipulate and admit upon the record that the complainant's typewriting machines are commonly known as and spoken of as and advertised as the Remington Typewriter or the Remington Typewriting Machine or as the Remington Standard Typewriter. Defendant's counsel therefore protests against the burdening of the record with testimony and exhibits that can prove nothing more than what defendant's counsel is ready to admit, and which are merely cumulative. 650

A. I produce a general catalogue distinguished as A 300, issued by Wyckoff, Seamans & Benedict, about March, 1895, and continuing to be issued by them and used for the purposes of their business until about January, 1897. I produce an advertising novelty designated as B 310, which was very widely circulated from about August, 1894, and for some time thereafter. I produce a little pamphlet issued by J. O'Flaherty, dealer in Montreal for the typewriting machines manufactured by Wyckoff, Seamans & Benedict, which was received on the 14th of May, 1890, and which deponent has reason to believe was widely circulated by said O'Flaherty at about this time. I produce a reprint of an article entitled "The Typewriter, Its Growth and Uses," reproduced from *Scribner's Magazine* of April, 651

652 1888, of which many thousand copies have been circulated in all *parts of the world by Wyckoff*, Seamans & Benedict and their representatives. I produce a copy of catalogue issued by Wyckoff, Seamans & Benedict, designated A 3, and used by them between the years 1893 and 1895. I produce an advertising postal card, designated B 376, circulated by Wyckoff, Seamans & Benedict, about June, 1895. I produce an advertising postal card, designated B 346, circulated by Wyckoff, Seamans & Benedict about February, 1895. I produce an advertising postal card, designated B 334, circulated by Wyckoff, Seamans & Benedict about January, 1895. I produce an advertising postal card, designated B 378,
653 circulated about June, 1895, by Wyckoff, Seamans & Benedict. I produce an advertising card designated B 466, circulated by Wyckoff, Seamans & Benedict. I produce catalogue, designated B 540, published by Wyckoff, Seamans & Benedict about January, 1897, which has continued in common use until the present time and has been widely circulated in every quarter of the globe. I produce an illustrated advertising card designated F 707, published in the Italian language by Wyckoff, Seamans & Benedict. I produce an advertising card published in French relative to the Exposition Universelle by Wyckoff, Seamans & Benedict. I produce a pamphlet distinguished as Af814, published by
654 Wyckoff, Seamans & Benedict, and largely circulated in the countries where the French language is commonly used. I produce a catalogue in the French language issued by Wyckoff, Seamans & Benedict, and largely circulated where the French language is spoken. I produce an advertising pamphlet entitled "Les Concours de Machines à écrire," in which the typewriters manufactured by Wyckoff, Seamans & Benedict are referred to on pages 4, 5 and 6, and elsewhere. I produce a pamphlet entitled "Ma Machine a Écrire, Histoire du Passé et du Présent," in which the typewriting machines manufactured by Wyckoff, Seamans & Benedict are referred to on

pages 10, 11 and 13. I produce an advertising 655
*pamphlet entitled* " Erster Versuch," printed in the German language, which was published by Glogowski & Co., the German representatives of Wyckoff, Seamans & Benedict, and used for advertising typewriting machines manufactured by them throughout Germany and elsewhere, where the German language was commonly used. I produce a pamphlet printed in the Spanish language and published by Wyckoff, Seamans & Benedict, containing instructions for the operation of the models Nos. 3 and 5 of the typewriting machines manufactured by Wyckoff, Seamans & Benedict. I produce a pamphlet in the Spanish language published by Wyckoff, Seamans & Benedict, and containing instructions for the use of 656
models Nos. 2 and 4 of the typewriting machines manufactured by Wyckoff, Seamans & Benedict. I produce a pamphlet published by Wyckoff, Seamans & Benedict in the French language containing instructions for the No. 2 and No. 4 models of the typewriting machines manufactured by Wyckoff, Seamans & Benedict. I produce a printed slip containing a translation into the French language of an article contained in the *New York Tribune* of the 21st of August, 1892, in which the typewriting machines manufactured by Wyckoff, Seamans & Benedict are referred to. I produce a leaflet printed in the Spanish language designated Z543 containing advertisement of the No. 7 model of 657
typewriting machines manufactured by Wyckoff, Seamans & Benedict. I produce a circular printed in the German language relative to the No. 5 model of typewriting machines manufactured by Wyckoff, Seamans & Benedict entitled " Einige Urteile." I produce a catalogue in the Portuguese language issued by Wyckoff, Seamans & Benedict entitled " A Machina de Escrever Remington " which has been used to advertise typewriting machines manufactured by Wyckoff, Seamans and Benedict in Portugal, Brazil and in other places where the Portuguese language is commonly used. I produce a pamphlet

658 designated F 615 issued by Wyckoff, Seamans & Benedict in the Portuguese language and used for advertising typewriting machines manufactured by them in places where the Portuguese language is commonly used. I produce a pamphlet published by Wyckoff, Seamans & Benedict in the French language designated A 571 which has been extensively used for advertising typewriting machines advertised by them in France and other places where the French language is commonly used. I produce a pamphlet published by Wyckoff, Seamans & Benedict in the Italian language designated A 573 which has been extensively used for advertising the typewriting machines manufactured by them in Italy
659 and in such other places as the Italian language is commonly used. I produce an advertising pamphlet issued by Wyckoff, Seamans & Benedict in the Spanish language designated A 572 which has been extensively used for advertising typewriting machines manufactured by them in Spain and throughout the Spanish speaking countries of Central and South America, also in Mexico. I produce catalogue issued by Wyckoff, Seamans & Benedict, in the Spanish language, designated F 550, used for advertising the typewriting machines manufactured by them in Spain and in the Spanish speaking countries of North, Central and South America. I produce an advertising card issued by Wyckoff, Seamans &
660 Benedict, in Spanish, designated F701, which has been extensively used for announcing the granting of a diploma of honor to the writing machines manufactured by them, at the Exposition in Brussels, in the year 1897. I produce a pamphlet issued by Wyckoff, Seamans & Benedict, in the Spanish language, for the purpose of showing the very extensive use of the typewriting machines manufactured by them in the departments of the Government at Washington, which is designated F530. This pamphlet has been very extensively circulated in all parts of the world where the Spanish language is spoken. I produce an advertising

pamphlet, issued by Wyckoff, Seamans & Benedict, 661
in the Portuguese language, designated B623, used for advertising the typewriting machines manufactured by them in places where the Portuguese language is commonly used. I produce a pamphlet for advertising purposes, issued by Wyckoff, Seamans & Benedict, designated B622, and extensively used in all Spanish speaking countries of the world for the purpose of advertising typewriting machines manufactured by them. I produce a pamphlet containing instructions for the use of the No. 7 model of the typewriting machines manufactured by Wyckoff, Seamans & Benedict, printed in the Spanish language for the convenience of users of the typewriting machines manufactured by them to whom that 662
language is most familiar. I produce a pamphlet, designated Nf828, containing instructions for the use of the No. 7 model of machines manufactured by Wyckoff, Seamans & Benedict, and issued by them for the convenience and instruction of users of the typewriting machines manufactured by them who are familiar with the French language.

[RECESS.]

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Counsel for complainant offers in evidence the several catalogues, circulars, &c., which have 663
been produced and referred to by the witness in his last answer, and the same are put in evidence and marked "Complainant's Exhibit Wyckoff, Seamans & Benedict Catalogues, Circulars," &c.

28 Q. Referring to the catalogues and circulars which have been put in evidence, will you please state where the catalogues, circulars, &c., which are printed in the English language have been circulated? A. Principally in the United States and Canada, but generally in English-speaking countries.

664 29 Q. Where have the catalogues which appear to be printed in French, German, &c., that is, in foreign languages, been circulated? A. In the countries in which the languages in which the publications are printed are most commonly used.

30 Q. Please state whether or not any advertisements have from time to time been inserted by Wyckoff, Seamans & Benedict in any magazines published in this country, and if so, can you produce such magazines containing advertisements of the machines manufactured by Wyckoff, Seamans & Benedict? A. The typewriting machines manufactured by Wyckoff, Seamans & Benedict have been regularly advertised in most of the larger mag-
665 azines published in this country. I can produce a number of copies showing such advertisements.

31 Q. Will you now produce any copies of magazines published in this country which you have in your possession in which magazines advertisements of the typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict appear? A. I produce herewith a number of copies as requested.

32 Q. Will you take up these several magazines separately, stating what the magazine is, where published and circulated, if you know, and also states upon what page or pages you find any advertisement of typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict? A. I find
666 advertisements of the typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict, namely:

Scribner's Magazine, New York, August, 1894, advertising, p. 51.

Scribner's Magazine, N. Y., Oct., 1894, adv., p. 50.

Cosmopolitan, April, 1894, N. Y., advertising, p. 27.

Harper's Monthly, N. Y., April, 1894, adv., p. 47.

Harper's Monthly, N. Y., May, 1894, adv., p 50.

Century Magazine, N. Y., May, 1894, adv., p. 73.

Cosmopolitan, N. Y., June, 1894, adv., p. 27.

Harper's Monthly, N. Y., June, 1894, adv., p. 48. 667
Century Magazine, N. Y., July, 1894, adv., p. 63.
Century Magazine, N. Y., August, 1894, adv., p. 63.
Century Magazine, N. Y., Oct., 1894, adv., p. 79.
Review of Reviews, N. Y., Oct., 1894, adv., p. 21.
Cosmopolitan, N. Y., Oct., 1894, adv., p. 43.
McClure's Magazine, N. Y., Oct., 1894, adv., p. 15.
Harper's Monthly, N. Y., Oct., 1894, adv., p. 67.
Harper's Monthly, May, 1895, adv., p. 79.
Harper's Monthly, November, 1895, adv., p. 79.
Harper's Monthly, N. Y., Sept., 1895, adv., p. 51.
Harper's Monthly, April, 1895, N. Y., adv., p. 93.
Century Magazine, N. Y., Jan., 1895, adv., p. 55.
Century Magazine, N. Y., Oct., 1895, adv., p. 77. 668
Century Magazine, N. Y., Feb., 1895, adv., p. 65.
Century Magazine, N. Y., April, 1895, adv., p. 69.
Scribner's Magazine, N. Y., Apr., 1895, adv., p. 75.
The Atlantic Monthly, Boston, Apr., 1895, adv., p. 24.
Cosmopolitan, N. Y., October, 1895, adv., p.
McClure's Magazine, N. Y., April, 1895, advertising, p. 38.
McClure's Magazine, N. Y., January, 1895, advertising, p. 45.
The Forum, N. Y., January, 1895, advertising, p. 1.
Cosmopolitan, N. Y., November, 1895, advertising, 1895, p. 669
The Forum, N. Y., November, 1895, advertising, p. 1.
The Forum, N. Y., October, 1894 (cover page).
Cosmopolitan, N. Y., March, 1895, advertising, p
Harper's Monthly, N. Y., March, 1895, advertising, p. 76.
Scribner's Magazine, N. Y., March, 1895, advertising, p. 56.
McClure's Magazine, N. Y., February, 1895, advertising, p. 27.

670 Review of Reviews, N. Y., January, 1895, advertising, p. 28.

Review of Reviews, N. Y., September, 1895, advertising, p. 31.

Harper's Magazine, N. Y., July, 1893, advertising, p. 59.

The Forum, N. Y, March, 1893, advertising, p. 1.

Scribner's Magazine, N. Y., July, 1893, advertising, p. 74.

Scribner's Magazine, N. Y., April, 1893, advertising, p. 75.

The Forum, N. Y., January, 1893, advertising, p. 1.

The Century, N. Y., April, 1893, advertising, p. 93.

671 The Century, N. Y., July, 1896, advertising, p. 61.

The Century, N. Y., August, 1896, advertising p. 61.

The Century, N. Y., July, 1893, advertising, p. 83.

Harper's Monthly, N. Y., April, 1893, advertising, p. 73.

Harper's Monthly, N. Y., July, 1897, advertising, p. 63.

The Century, N. Y., July, 1897, advertising, p. 55.

Harper's Monthly, January, 1882, advertising, p. 34.

Scribner's Monthly, N. Y., August, 1881, advertising, p. 10.

Scribner's Monthly, February, 1881, advertising,

672 p. 13.

The Arena, Boston, September, 1892, advertising, p. 2.

The Arena, Boston, June, 1892, advertising, p. 2.

The Engineering Magazine, N. Y., Nov., 1892, advertising, p. 23.

The Forum, N. Y., November, 1892, advertising, p. 1.

The Forum, N. Y., July, 1892, advertising, p. 1.

The Century, N. Y., August, 1892, advertising, p. 67.

The Cosmopolitan, N. Y., August, 1892, advertising. p. 39.

Review of Reviews, N. Y., November, 1892 (cover page). 673

Harper's Monthly, N. Y., August, 1892, advertising, p. 45.

Review of Reviews, N. Y., June, 1892, advertising, p. 45.

The Cosmopolitan, N. Y., July, 1892, advertising, p. 39.

Scribner's, N. Y., August, 1892, advertising, p. 63.

The said several magazines which have been referred to by the witness in his answer are offered in evidence and are marked "Complainant's Magazine Exhibits Nos. 1 to 65," inclusive.

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33 Q. I now call your attention to two copies of an almanac which purport to have been issued by the *New York World*, one in the year 1894 and the other in the year 1895, and ask you to examine the same and to say whether or not you find any advertisement in said almanac of the typewriting machines manufactured by Wyckoff, Seamans & Benedict, and if if so, state the page on which you find said advertisement? A. I find upon examination an advertisement of the machines manufactured by Wyckoff, Seamans & Benedict appears on page 529 of the issue dated 1894, and a similar advertisement appears on page 494 of the issue dated 1895.

The two almanacs referred to by the witness in his last answer are offered in evidence and marked "Complainant's Exhibit World Almanac Nos. 1 and 2." 675

34 Q. State whether or not these several magazines, which have been identified by you and put in evidence, are circulated among the public, and if so, what you know on that subject? A. All the magazines put in evidence are widely circulated in this and foreign countries, and with one exception they are all reputed to have been very largely circulated.

35 Q. State whether or not the World Almanac

676 which has been introduced in evidence is circulated in this city? A. It is understood to have been very largely circulated in this city and in other places.

36 Q. I show you a book or novel bound in paper covers, entitled "Baron Montez of Panama and Paris, first edition 60,000," purporting to be published by the Home Publishing Company of New York in 1893. I ask you to examine said book and say whether or not you find any reference therein to the so-called Remington typewriter, and if so, state upon what pages you find a reference thereto? A. I find upon examination that the Remington typewriter is referred to on pages 71, 81, and 84 of said book.

677 37 Q. When did you first see a book in circulation entitled "Baron Montez of Panama and Paris"? A. I purchased a copy of said book in 1893 or 1894.

It is admitted that the said book was published and circulated in 1893.

Complainant's counsel offers the said book in evidence, and the same is marked "Complainant's Exhibit Montez Novel, 1893."

38 Q. I call your attention to a publication purporting to be an export and Spanish edition of the *Scientific American*, bearing date New York, January, 1899, and ask you whether you have ever before seen a paper or publication like said export and

678 Spanish edition of the *Scientific American* and about when it first came to your attention? A. I have seen the publication before and have been familiar with it for a number of years. I can't say exactly when I first saw it.

39 Q. Who publishes this export edition of the *Scientific American* and where is it published, if you know? A. It is published by Munn & Company in the City of New York.

40 Q. Do you know where the export and Spanish edition of the *Scientific American* is circulated? A. To some extent in this country and largely in

foreign countries where the English and Spanish languages are used commercially. 679

41 Q. Referring to the particular copy of the export edition of the *Scientific American* which you hold in your hand and which bears date January, 1899, please say whether or not you find in said copy any advertisement of the so-called Rem-Sho, or Remington Sholes typewriter, and if you do, please state on what page you find it? A. I find on examination that an advertisement of the so-called Rem-Sho typewriter appears on page 18 of the issue referred to.

42 Q. Did you obtain the copy of the export edition of the *Scientific American* which you hold in your hand, and if so, how or where did you obtain it? A. It came to us, as I have reason to believe, in the ordinary course of business. 680

Counsel for defendant admits that the advertisement of the Rem-Sho typewriter appearing upon advertising page 18 of the export and Spanish edition of the *Scientific American* for January, 1899, was prepared and inserted and paid for by the Remington Sholes Company.

Counsel for complainant offers in evidence the advertisement of the Rem-Sho machine which appears on page 18 of the *Scientific American* of January, 1899, and the same is marked "Complainant's Exhibit Rem-Sho Advertisement in export Edition of *Scientific American.*" 681

Defendant's counsel admits that the same advertisement was inserted in the February, March and April editions of the same publication.

43 Q. I call your attention now to a copy of the *Illustrated Phonographic World* for June, 1897, and ask you to examine the same and to say whether or not you find any advertisement or printed description therein of the Remington-Sholes or Rem-Sho typewriter, and if so, upon what page or pages you find such description? A. I find upon pages 392,

682 393 and 394 of said issue what purports to be a letter from Franklin Remington descriptive of the Rem-Sho typewriter. I also find on the back of the cover page of the same publication an advertisement of said machine over the name of the Howe Scale Company, general sales agents.

Counsel for defendant admits that the letter appearing upon pages 392, 393 and 394, and that the advertisement appearing upon the back cover page of said *Illustrated Phonographic World* for June, 1897, were written by Mr. Franklin Remington, General Manager of the Remington-Sholes Company, and were published by him on behalf of said company and of the defendant
683 in this cause.

Counsel for complainant offers in evidence the *Illustrated Phonographic World* of June, 1897, and particularly pages 392, 393 and 394 thereof, inclusive, and the advertisement of the Howe Scale Company on the back cover of said *Illustraied Phonographic World*, and the same is marked "Complainant's Exhibit Phonographic World, June, 1897."

44 Q. I call your attention to another publication entitled *The Chamber of Commerce Journal*, purporting to have been published in London, and of date March, 1899, and ask you to examine the same and say whether or not you have ever before seen a
684 copy of this so-called *Chamber of Commerce Journal*, and what, if anything, you know concerning its publication and circulation? A. I have before seen the *Chamber of Commerce Journal* and understand it to be the official organ of the London Chamber of Commerce, and as such is freely circulated in Great Britain and Ireland, throughout British colonies all over the world and probably in other countries also.

45 Q. Please examine said publication and say whether or not you find any advertisements therein purporting to be inserted by persons who are in want of situations as typewriter operators, and if so, on

what pages you find the same? A. I find upon ex- 685
amination a number of such advertisements appearing on pages 47, 48 and 49 of said issue of said publication.

Defendant's counsel concedes that this so-called Chamber of Commerce Journal is published and circulated as stated by the witness in his foregoing answer.

The said publication referred to in the last answer of the witness is offered in evidence and marked "Complainant's Exhibit, Chamber of Commerce Journal, March, 1899."

46 Q. I show you two copies of magazines, one being Scribner's monthly illustrated magazine for 686
October, 1881, and the other the Century illustrated monthly magazine for February, 1882, and ask you to examine the same and to state whether or not you find any advertisement of the Remington typewriter in said magazines, and if so, upon what pages. A. I find, upon examination that the issue of Scribner's monthly illustrated magazine for October, 1881, contains an advertisement of the Remington typewriter upon advertising page 21 of that issue, and that the issue of the Century illustrated monthly magazine for February, 1882, contains an advertisement of the Remington typewriter on advertising page No. 20 of said issue.

The said magazines shown to and referred to 687
by the witness are offered in evidence and marked "Complainant's Exhibit Scribner's Magazine for October, 1881, and the Century Magazine for February, 1882."

47 Q. I call your attention to a publication entitled "The Phonetic Journal," bearing date Saturday, November 12, 1898, and ask you to examine the same and, if you know, state where said publication is published and circulated? A. The publication in question, the "Phonetic Journal," is published in England and circulated largely in Great

688 Britain and Ireland, the British Colonies; to some extent also in the United States and elsewhere throughout the world.

48 Q. State whether or not you find any reference or advertisement relating to or referring to the Remington-Sholes typewriter or Rem-Sho typewriter, so-called, and if so, on what page or pages of said publication?

Counsel for defendant objects to the question as immaterial, irrelevant and incompetent and for the reason that if any statement or matter appears in said publication with reference to the Remington-Sholes typewriter, or the Rem-
689 Sho typewriter, it has not been, and cannot be, proven that said statement or matter was published under authority of the defendant in this cause, or the Remington-Sholes Company, or any one else having authority to act in behalf of said parties.

A. I find upon examination of page 723 of the body of said publication what is apparently an editorial reference of the visit of Mr. F. Remington, general manager of the Remington-Sholes Company of Chicago, to London, with a view to establishing offices there as headquarters for the British Isles, and also an advertisement on page 5 of the wrapper of said publication containing an announcement to
690 the same general effect over the name of the Remington-Sholes Company, stating that their temporary offices are at 28a Basinghall street, London, E. C.

49 Q. Do you find in said publication any advertisement of typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict, and if so, state on what page you find said advertisement? A. I find upon examination that page 2 of the wrapper of said issue of said publication contains an advertisement of typewriting machines manufactured by Wyckoff, Seamans & Benedict.

The copy of The Phonetic Journal of date Nov. 12, 1898, which has been shown to and identified by the witness, is offered in evidence and particularly the advertisement of Wyckoff, Seamans & Benedict on page 2, the editorial reference to F. Remington and the Remington-Sholes Company of Chicago on page 723 and the advertisement of the Remington-Sholes Company on page 5, of advertisements, and the same is filed in evidence and marked "Complainant's Exhibit Phonetic Journal. Nov. 12, 1898." 691

Counsel for defendant objects to the introduction of the exhibit for the reasons given in his objection to question 48. 692

Adjourned to Tuesday May 2, 1899, at 10:30 A. M.

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NEW YORK, May 2, 1899,
10.30 A M.

Met pursuant to adjournment.

Present—Counsel as before.

DIRECT-EXAMINATION of Mr. Jones, continued:

50 Q. I call your attention to a newspaper purporting to be published in the City of New York, under date of November 28, 1898, and called *New York Commercial*. Do you know whether or not this is a copy of a newspaper published in this city? A. It is a copy of a well known paper published in the City of New York, and is largely circulated there and elsewhere. 693

Complainant's counsel offers in evidence the copy of the newspaper produced and identified by the witness, and particularly that column on page 2 of said paper headed "Army Bids Open," and the same is marked "Complainant's Exhibit *New York Commercial*, Nov. 28th, 1898."

694 CROSS-EXAMINATION by Mr. Fisher:

51 x-Q. In your direct-examination you have made a statement as to approximately how much money has been expended by Wyckoff, Seamans & Benedict in advertising their machines since you first became connected with that concern. Does this statement cover the amount expended in advertising by Wyckoff, Seamans & Benedict alone, or does it include any amounts expended by the Union Typewriter Company, or so-called typewriter trust? A. It includes amounts expended by Wyckoff, Seamans & Benedict alone.

52 x-Q. Upon examination of the typewriting machine on which your deposition is being taken I
695 find upon the front bar of the base the words "Remington Standard Typewriter No. 2," and I find upon the cross-bar in front of the keyboard the words, "Remington Standard Typewriter, Manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A."; upon the top of the main frame I find a red seal bearing the illustration of a typewriter and containing the words (among others), "Standard Remington Typewriter"; and upon the paper table I find the same red seal having the same words and illustration thereon. I ask you to state how long it has been the practice to mark machines in this manner? A. I cannot state the exact period that the machines have been so marked; the in-
696 scriptions have been changed from time to time and I would need a reference to give exact dates as I could not tell exactly from memory.

53 x-Q. You know, do you not, that the machines have been marked in this manner for a number of years past? A. In the main the machines have been so marked for some years.

54 x-Q. The red seal has appeared upon the Wyckoff, Seamans & Benedict machines ever since you have been with that concern, has it not? A. I believe not. I cannot state the exact period at which the red seal was put upon the top plate of the

machine without reference to our records, but be- 697
lieve that I am correct in stating that the machines have been so marked only within a period of some six years.

55 x-Q. It has also been the practice of Wyckoff, Seamans & Benedict, for at least six years past, to mark the front bar and the bar extending above the keyboard with the words "Remington Standard Typewriter," has it not? A. It has, as far as my knowledge goes.

56 x-Q. And to mark also the words "Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A." thereon? A. I am uncertain as to the appearance of the name of the firm upon all machines manufactured by Wyckoff, Seamans & Benedict. Special 698
inscriptions are placed upon many of the machines manufactured and may be placed in this position. My duties do not necessitate my inspection of machines thus manufactured.

57 x-Q. But this is the ordinary way of marking the machines that are commonly exposed for sale, is it not? I mean the machines such as are found on exhibition and offered for sale at the various offices of your company throughout this country. A. It is the ordinary method of marking such machines.

58 x-Q. Has it not been the practice of Wyckoff, Seamans & Benedict, for a number of years past to advertise its machines as the Remington Standard typewriter or Standard Remington typewriter? A. 699
The machines have been so advertised.

59 x-Q. And the machines are being so advertised at the present time, are they not? A. They are.

60 x-Q. Is it not also the practice of Wyckoff, Seamans & Benedict to mark its shipping cases, its letter heads, its envelopes and its signs, and much of its advertising matter with the name "Remington Standard Typewriter" or "Standard Remington Typewriter"? A. Some portions only of the materials mentioned in the question are thus marked.

61 x-Q. And it has long been the practice of Wyckoff, Seamans & Benedict, and is now its practice, is

700 it not, to use the red seal having the illustration of a typewriter and the words "Standard Remington Typewriter" upon much of its advertising matter? A. It has been the practice to so mark a large portion, but not the whole of the advertising matter of Wyckoff, Seamans & Benedict, as described.

62 x-Q. I call your attention to an advertisement upon the back cover page of the *Illustrated Phonographic World* for April, 1899, and to an advertisement upon the cover of the *Federal Reporter* for April 25, 1899, and ask you if in both of these advertisements the machine manufactured by Wyckoff, Seamans & Benedict is not advertised as "The Remington Standard Typewriter"? A. It is
701 so advertised in the publication named.

63 x-Q. Is it not a fact, Mr. Jones, that in selecting the advertisements which you have offered in evidence you have been careful to exclude advertisements in which the machine of Wyckoff, Seamans & Benedict is mentioned as the Remington Standard typewriter, and have been partial at least to those advertisements in which the machine is mentioned as the Remington typewriter? A. To some extent it is so.

REDIRECT-EXAMINATION by Mr. Donnelly:

64 RD-Q. In these various advertisements to
702 which counsel for defendant has referred and in which the word "Standard" was used, was the name Remington also used? A. Remington was, of course, prominently displayed, as it is in all advertisements of machines manufactured by Wyckoff, Seamans & Benedict.

65 RD-Q. Is it, or not, a fact that the name Remington is always prominently displayed in the advertisements and upon all the machines manufactured and sold by Wyckoff, Seamans & Benedict, so far as you have observed or know? A. It is.

66 RD-Q. Did you ever know of any typewriter company or of any typewriting machine in connec-

tion with which or upon which the name "Remington" was used other than the machines of Wyckoff, Seamans & Benedict or its predecessors, except the Remington-Sholes Company and the so-called Remington Sholes typewriting machines? A. I have never known of the use of the name Remington on any typewriting machines excepting the ones mentioned in the question. 703

R. McKean Jones.

Howard B. Wilson, called as a witness on behalf of the complainant, being duly sworn, testifies as follows:

By Mr. Donnelly: 704

1 Q. State your name, age, residence and occupation? A. Howard B. Wilson; residence, 162 West Sixty-fourth street, New York City; age, thirty-two; occupation, employed by Wyckoff, Seamans & Benedict, 327 Broadway, N. Y.

2 Q. How long have you been in the employ of Wyckoff, Seamans & Benedict? A. Twelve years.

3 Q. During that time what have been your duties in connection with the business of Wyckoff, Seamans & Benedict? A. I began there as assistant bookkeeper, and was afterwards made cashier, and for the last few years have had charge of the correspondence and mail matter addressed to the company. 705

4 Q. In handling and opening the mail matter addressed to Wyckoff, Seamans & Benedict have you or not observed that letters or communications were addressed to your principal or employer by any other name or names than Wyckoff, Seamans & Benedict, and if so, state what you know and have observed in that regard? A. The mail matter addressed to 327 Broadway, which is evidently intended for Wyckoff, Seamans, & Benedict is constantly being received as the "Remington Typewriter Company," "Remington Typewriter."

706 5 Q. Please state for how long a period, according to your best recollection, you have observed that mail matter or written communications were addressed to 327 Broadway, either as "Remington Typewriter Company," or "Remington Typewriter"? A. Five or six years.

6 Q. Have you ever heard persons, other than those employed by Wyckoff, Seamans & Benedict, speak of the concern known as Wyckoff, Seamans & Benedict by any other name than Wyckoff, Seamans & Benedict, and if so, by what name or names? A. In conversation with customers they very often say the Remington Company or the Remington Typewriter Company, or the Remington Typewrit-
707 ing Company.

7 Q. For how long a period have you observed that practice among customers of Wyckoff, Seamans & Benedict? A. Ever since my connection with the house.

7 Q. Where at present is Wyckoff, Seamans & Benedict's place in this city? A. 327 Broadway, New York.

9 Q. For how long a period have they been located at 327 Broadway? A. Something like six or eight years.

10 Q. And prior to that period where was their place of business located in this city? A. 339 Broadway.

708 11 Q. About how long, to your knowledge, were they located at 339 Broadway? A. I was with them there some four or five years; how much longer they were there I don't know.

12 Q. I show you what purports to be a letter and ask you to examine the same and to state whether or not you have ever seen said letter before and what you know about it? A. This letter was received at 327 Broadway addressed to Wyckoff, Seamans & Benedict, on November 4, 1898. I opened the envelope containing this letter, which was received in the regular mail addressed to Wyckoff,

Seamans & Benedict, and the envelope was opened by me. 709

The letter referred to is marked for identification "Lee Letter of Nov. 4th, 1898."

18 Q. Have you sought to inform yourself and have you made any investigation of the number of typewriting machines which Wyckoff, Seamans & Benedict and its predecessors have manufactured and sold? A. I have.

14 Q. Can you and will you state approximately the number of typewriting machines which Wyckoff, Seamans & Benedict and its predecessors have manufactured and sold? A. Two hundred and fifty thousand. 710

Cross examination waived.

HOWARD B. WILSON.

Complainant's counsel offers in evidence catalogues, circulars and advertising media as follows:

A catalogue which is descriptive of the Rem-Sho typewriter which is advertised as being manufactured by the Remington-Sholes Company, of Chicago, U. S. A., upon the title page of which appears Page, Dennis & Co., Sales Agents, No. 341 Broadway, and the same is marked "Complainant's Exhibit Rem-Sho Catalogue." 711

Complainant's counsel next offers a catalogue of Rem-Sho specialties on the title page of which appears "Howe Scale Co., Sales Agents, 508 Market St., Phila, Pa.," and the same is marked "Complainant's Exhibit Rem-Sho Specialties Catalogue."

Complainant's counsel next offers in evidence a booklet containing directions for repairing and adjusting, &c., the Rem-Sho typewriter, and the same is filed in evidence and marked

712 "Complainant's Exhibit Directions for Adjusting, &c., Rem-Sho Typewriter."

Complainant's counsel next offers in evidence a circular entitled "A few good words for the Rem-Sho Typewriter," on the back portion of which appears the name of "Page, Dennis & Co., Sales Agents, No. 341 Broadway," and the same is marked "Complainant's Exhibit Good Words for Rem-Sho Typewriter."

Complainant's counsel next offers in evidence a circular entitled "Directions for Operating the Rem-Sho Typewriter," on the first page of which appears the name "Howe Scale Co., General Sales Agent for the United States," and
713 the same is filed in evidence and marked "Complainant's Exhibit Directions for Operating Rem-Sho Typewriter."

Complainant's counsel next offers in evidence a circular containing the names of some of the business houses in Chicago and elsewhere that are using the Rem-Sho typewriter; on the front page of this circular appears the name "Page, Dennis & Co., Sales Agents, No. 341 Broadwry," and the same is filed in evidence and marked "Complainant's Exhibit Rem-Sho Circular of Users of that Machine."

Complainant's counsel next offers in evidence a circular entitled "Special Good Words for the
714 Rem-Sho Typewriter," and the same is filed in evidence and marked "Complainant's Exhibit Special Good Words for Rem-Sho Typewriter."

It is admitted by the defendant that these several catalogues and circulars, which are above filed in evidence, were caused to be printed by the Remington-Sholes Company and have been circulated in public and in the trade by the defendant and its agents to advertise and promote the sale of the Rem-Sho typewriter.

[Recess.]

A. PALMER BROOKS, a witness called on behalf of 715
the complainant, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. A. Palmer Brook; age, thirty-three; residence, 58 West Ninety-sixth street, New York; occupation, sales agent for Wyckoff, Seamans & Benedict.

2 Q. For how long a period have you been a salesman in the service of Wyckoff, Seamans & Benedict? A. Nearly five years.

3 Q. And where has such service been performed? 716
A. Dealing with business houses in the lower and end of the City of New York, Borough of Manhattan.

4 Q. Do you have anything to do with looking after bids or making sales to the United States or to the War Department of the United States? A. Yes, sir, I have the putting in of bids and attending to all the business with the War Department in this city and vicinity.

5 Q. I suppose you mean looking after the business of Wyckoff, Seamans & Benedict, do you not? A. Yes, sir.

6 Q. I call your attention to Complainant's Exhibit New York Commercial, November 28, 1898, and 717
particularly to a paragraph therein in the column headed "Army Bids Open" and the following paragraph: Remington Typewriter Co.—Typewriter complete, $80.00." Do you remember at any time to have seen a copy of said paper of November 28, 1898, and had your attention drawn to the particular item to which I have above referred? A. Yes, my attention was called to the item in the paper mentioned, whereupon I went to the office of the newspaper and purchased a copy of it, then going to the War Department to ascertain if the award had been made to our com-

718 pany as stated in that item. Upon looking up the records I ascertained that the award or bid, rather, had been made by the Remington-Sholes people and not by the Remington Company, which I represented.

Counsel for defendant objects to and moves to strike out the answer as irresponsive to the question, as immaterial, irrelevant and incompetent, as not the best evidence and for the reason that it has not been shown that the newspaper item referred to by the witness was published or caused to be published by defendant company or its agents, or that they were in any
719 manner directly or indirectly responsible therefor.

7 Q. Do you know whether, as a matter of fact, Wyckoff, Seamans & Benedict, or the concern whom you represent, had made any bid for the typewriters or concerning typewriters at the time referred to in Complainant's Exhibit New York Commercial, November 28, 1898, and if you have any knowledge on that subject, please state what you know? A. I had delivered no bid to the War Department at just that time, but as emergency orders during the American-Spanish war were frequently awarded without specific bid, the War Department knowing our figures, these emergency orders were awarded
720 without bids, and I supposed that this was such an order when I went to the War Department.

8 Q. Did you or not at the time of your visit to the War Department ascertain whether or not the bid or the award, if any, related to typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict? I simply ask for the fact without reference to conversation between you and the officials of the War Department.

Counsel for defendant objects to the question as calling for secondary evidence, the records of the War Department being the best evidence.

A. I found on investigation that the bid did not refer, as I supposed, to machines made by the company which I represent. 721

9 Q. Do you canvass in the district which was awarded to you by Wyckoff, Seamans & Benedict for the purpose of selling their typewriting machines? A. Yes, sir; I try to become acquainted with every important business house in my section of the city in order to introduce and sell to business houses the Remington Company's machine.

10 Q. Just state what is included in the district or territory that you canvass in in the City of New York, Borough of Manhattan, for the sale of the typewriting machines of Wyckoff, Seamans & Benedict? A. My district comprises all that section of the city below Exchange place and Morris street, the lower end of Manhattan Borough as well as the War Department, Headquarters of the East, of Governor's Island and the whole of Staten Island. The War Department building, to which I have referred, is situated at No. 39 Whitehall street in the lower section of New York City. 722

11 Q. Have you even seen or examined the so-called Remington-Sholes or Rem Sho typewriter? A. Yes, sir; I have looked it over with some care on several occasions.

12 Q. Have you found any such machines in any places which you have visited in the territory which you have from time to time canvassed for the sale of typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict? A. Yes, sir; I have found a few of them. 723

13 Q. And in these places where you found these machines have you at any time had any interview with the owners or users thereof as to their origin, or as to what concern manufactured them? A. Yes, sir; I have.

14 Q. From your interview with these people did you or not learn what impression or belief rested or existed in their minds as to the origin of these machines, or as to who was the maker thereof?

724 Question objected to as immaterial, irrelevant and incompetent, and as calling for secondary evidence.

A. On several occasions I was told by people that they had just purchased a Remington machine at better figures than I could have given, and on asking to see the machines discovered that they were not Wyckoff, Seamans & Benedict's machines, but the Remington-Sholes, and explained to these people that the machines were not made by our people, we had nothing to do with them. Recently at the War Department I was told by the gentleman who has charge of the stock that they had just received a shipment of twelve Remington machines from Jef-
725 fersonville, Indiana, from the Quartermaster's Department there, and on being shown the machines found that they were not Remington machines at all, at which they seemed to be rather astonished.

Counsel for defendant moves to strike out the answer as immaterial, irrelevant and incompetent, and for the reason that neither the defendant in this cause nor the Remington-Sholes Company can be held responsible for conversation of strangers with complainant's salesmen, and for the reason also that the testimony is of a secondary character.

15 Q. Did you or not see the twelve machines
726 which were referred to by the gentleman who has charge of the stock in the War Department, as stated in your answer, and if so, what make of machines were they? A. I was shown the machines, or rather the boxes in which they were encased by the gentleman who had charge of the stock, and found that they were the Remington-Sholes make.

CROSS-EXAMINATION by Mr. Fisher:

16 x-Q When was it that you made your visit to the War Department? I mean the visit referred to in your answer to Q. 8? A. Two or three days after November 28, 1898.

17 x-Q. Did you at that time, or at any time, see 727
the bid referred to in the *New York Commercial* of November 28, 1898? A. The chief clerk of that department showed me a schedule on that occasion.

18 x-Q. You did not see the original bid? A. No, sir.

20 x-Q. And you have made no efforts to see it at any time since? A. No, sir; I have not. I did not see anything except the schedule that was published.

21 x-Q. You have stated that you have found some Remington-Sholes machines in the territory that is canvassed by you. How do you know that they were Remington-Sholes machines? A. Because upon examining the machine which we had in our 728
office some years ago I became familiar with its mechanism and general construction.

22 x-Q. Did you examine the name upon those machines, or any of them? A. No, sir.

23 x-Q. I suppose you recognized them or distinguished them from the Remington machine by the general appearance? A. Upon close inspection I am always able to tell.

24 x-Q. Will you give the names of any persons or person who, having bought a Remington-Sholes machine, told you that they could purchase a Remington machine at a better price than you could make? Please give the full name and addresses of such persons? A. I could not on the moment give 729
the names of any such persons, but remember distinctly of one man on the grouud floor of 35 South William street, the Curtiss Building, with whom I had been trying to negotiate, who told me that he had been able to get a Remington machine at much better figures than I quoted him, and finally allowed me to see the machine, which I recognized on inspection as a Remington-Sholes machine.

25 x-Q. Had you ever before that time seen or talked with that person? A. I had seen him on two or three occasions, and had expected to do business with him. He wanted export discount, and told

730 me that he could get a Remington at export price elsewhere if I would not sell it to him.

26 x-Q. Had you before that talked with him in regard to typewriting machines? A. Yes, sir.

27 x-Q. Prior to your first interview with him in regard to typewriting machines had he purchased this Remington-Sholes machine? A. No, sir.

28 x-Q. He knew that you were a salesman for Wyckoff, Seamans & Benedict, did he not? A. Yes, sir.

29 x-Q. And at your first interview with him you gave him prices, did you not? A. Yes, sir.

30 x-Q. Was he a party who used typewriting machines or sold them? A. I believe that he had
731 never owned a machine before, at least had none in his office at that time.

31 x-Q. How did you happen to go to him? A. I do not remember, probably canvassing for business.

32 x-Q. Can you tell at what part of the Curtiss Building the office of this man was located? A. At the left-hand side of the hallway as you enter from South William street, the first or second door.

33 x-Q. Can you give the address of any other person who having bought a Remington-Sholes machine told you that he could purchase a Remington machine at a better price than you name? A. I could not name any people on the moment.

34 x-Q. Can you give me the address of any other
732 such other person? A. Yesterday at 52 Broadway, on visiting an office, I do not recollect the floor, I saw a Remington-Sholes machine and, though they did not say anything about the price, they wanted to know if it was not made by my company.

Counsel for defendant moves to strike out the last part of the answer as not responsive to the question.

35 x-Q. And you can't locate the person who made this statement to you? A. I could find them but could not tell you the exact location now.

36 x-Q. When did you first know that you might

be called to testify in this case? A. About eleven 733
o'clock this morning I was told that I might be wanted on a case this afternoon, but was not told anything as to what would be wanted until I came into the office a little after one o'clock and was immediately sent down here without question.

37 x-Q. Are there any other persons whose addresses you can give, or whom you can locate in any way, and who having purchased a Remington-Sholes machine told you that they thought they could buy a Remington machine at a lower price than you could make them? A. I have had several such cases but have taken no particular note of them, as I did not suppose I would have reason to preserve such information.

734

38 x-Q. Please indicate more exactly the location of the person at 52 Broadway mentioned in your answer to x-Q. 34? A. I could not do that except upon visiting the building.

39 x-Q. Can you not describe the person or indicate his location in the building in some more definite way? A. This office was on the New street side of the building; the person was a lady of brunette type; that is as near as I can specify now.

40 x-Q. How large a building is this 52 Broadway? A. Probably 200 feet square and 12 stories high.

41 x-Q. You speak of having seen twelve boxes or cases containing typewriting machines at the Armory Building. Will you state what marks, if any, 735
there were upon the boxes that enabled you to tell what kind of machines were contained therein? A. I believe they were marked "Rem-Sho."

REDIRECT-EXAMINATION by Mr. Donnelly:

42 RD-Q. You have referred in your cross-examination to a public schedule which you saw in the Armory Building. Will you please tell us just what that schedule was—that is, how it was made up and what was on it, so far as you observed?

Counsel for defendant objects to the question as calling for secondary evidence.

736 A. It was a résumé of prices submitted to that department by the bid for articles which were spoken of in that newspaper statement.

43 RD-Q. Was this schedule on a sheet of paper or on cardboard or on what and where placed in the building, if it was hung up?

Same objection.

A. The schedule was on one or more large sheets of paper and in the hands of the chief clerk of that department, as all such papers are.

44 RD-Q. Did you look at the schedule? A. Yes, sir.

A. Palmer Brooks.

737

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New Haven, Conn., May 3, 1899,
3 P. M.

Met pursuant to adjournment.

Present—Counsel as before.

Charles Henry Downs, a witness called on behalf of the complainant, being duly sworn, testifies as follows:

738 Direct-examination by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Charles Henry Downs; age, fifty-two; residence, New Haven, Conn.; occupation, secretary of Peck Brothers Company.

2 Q. About how long have you been secretary of Peck Brothers Company? A. About nine years. This company now is a reorganized company as of May 1, 1898 I was elected secretary at the reorganization. Previous to that was secretary of the old company for about eight years.

3 Q. Has your company now in use, and if so, for

how long a period, has your company used and have you been acquainted with typewriting machines which are known and called the Remington typewriter? A. I should say thirteen years; my impression is thirteen years. 739

4 Q. Have you ever seen or have you any knowledge of a typewriting machine called the Remington-Sholes or Rem-Sho typewriter, and if so, when and under what circumstances was your attention first draw to that machine? A. Yes. In the fall of 1898 one of those machines was placed here on trial by Mr. Platt, to whom I applied for a machine on the supposition that he was the agent of the Remington Typewriter Company.

5 Q. Now please state whether you purchased that machine and if you did not purchase it, why? A. I contracted for the machine on the assumption that it was an improved Remington machine, and in fact made the deal that I would keep the machine, and Mr. Platt was to take our old Remington in part payment. Up to this time I had supposed it was a machine made by the Remington Company, and was first advised to the contrary, if my memory is right, by the representative of the Smith Premier Company, who advised me to the contrary. I then requested Mr. Platt to send and get the machine and return me the old one, stating as my reason that I had supposed I was obtaining the latest Remington machine, but I wish to state that this impression and assumption was based, not upon any statement made by Mr. Platt or his representatives that it was a Remington machine, but from the fact that the name and his long connection with the Remington people led me to believe that he was still selling the Remington machines. 740 741

6 Q. What name led you to believe that this so-called Remington-Sholes machine was an improved Remington typewriter? A. Well, I wouldn't say that it was the name Remington-Sholes, but it was the name Rem-Sho led me to believe that this was the product of the Remington people, coupled with

742 the fact Mr. Platt was, as I supposed, still selling for the Remington people.

7 Q. Will you kindly give Mr. Platt's Christian name? A. Well, as I recall it, Joseph E. Platt.

CROSS-EXAMINATION by Mr. Fisher:

8 x-Q. Were the machines which you say your company used for several years—about thirteen years—similar to the machine now on the table before you? A. Yes, sir.

9 x-Q. And were marked with the words "Remington Standard Typewriter, Manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A."? A. Yes, sir.

743 10 x-Q. Did you examine the Remington-Sholes machine that was left with you by Mr. Platt? A. No, sir.

11 x-Q. You do not recall, then, how that machine looked or how it was marked, do you? A. It is my impression that the name Rem-Sho appeared upon the machine, but I would not state that as a fact.

12 x-Q. Do you remember whether the name Remington-Sholes Typewriter Company appeared upon the machine or not? A. I do not. The information was given me by the representative of Mr. Platt that the machine was a Rem-Sho.

13 x-Q. You knew that Mr. Platt had been the agent for the Remington Company prior to the time
744 that he sent the Rem-Sho machine to you, did you not? A. Yes, sir.

14 x-Q. And that was why you applied to him for a machine? A. Yes, sir.

15 x-Q. And that was why you supposed that you were going to get a Remington machine, was it not? A. Yes, sir.

CHARLES H. DOWNS.

UNITED STATES CIRCUIT COURT, 745

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

vs.

HOWE SCALE COMPANY OF 1886.

746

WASHINGTON, D. C., May 5, 1899.

TESTIMONY taken in behalf of complainant in the above entitled cause before Horace A. Dodge, Esq., Notary Public and Special Examiner by consent and under stipulation heretofore made, and pursuant to the 67th Rule as amended of the Supreme Court of the United States in Equity.

Present—Mr. H. D. DONNELLY, for Complainant.

GEORGE P. FISHER, JR., for Defendant.

ROGER E. LEWIS, a witness of lawful age, being 747 duly cautioned and sworn, and called on behalf of complainant, testified as follows:

1 Q. State your name, age, residence and occupation? A. Roger E. Lewis; 26 years old; 240 South Exeter street; Baltimore; reporter.

2 Q. Do you know Thomas F. Crean? A. I do.

3 Q. About how long have you known Mr. Crean? A. About seven months.

4 Q. Do you know whether or not there is a concern doing business in the City of Baltimore known as the Tribune Cycle Company? A. I do.

748 5 Q. Did you at any time visit the place of business of the Tribune Cycle Company in company with Mr. Thomas F. Crean? A. Yes, sir; October 4th, 1898.

6 Q. At the time you visited the place of business of the Tribune Cycle Company in Baltimore, did you observe whether or not that concern was engaged in selling or offering for sale typewriting machines? A. Yes, sir.

7 Q. Did you see typewriting machines in the place of business of the Tribune Cycle Company at the time of your visit with Mr. Crean? A. I did.

8 Q. Did you notice what kind of typewriting machines they were, that is to say, the name of the
749 machines? A. The machine was known as the Rem-Sho.

9 Q. At the time of your visit to the place of business of the Tribune Cycle Company in Baltimore, did you notice any advertising media, such as catalogues, &c.? A. I did.

10 Q. At the time of your visit to the place of business of the Tribune Cycle Company in Baltimore, was anybody in charge, or did anybody appear to be in charge of the department which you visited and where you saw this so-called Rem-Sho machine? A. A gentleman by the name of J. T. Gillelan said he had charge of the typewriting machines.

750 11. Q. At the time you visited the typewriter department of the Tribune Cycle Company in Baltimore, was there any conversation between Mr. Crean and Mr. Gillelan in your presence and hearing? A. There was.

12 Q. Please state what was said by Mr. Gillelan and Mr. Crean on the occasion of your visit to the office of the Tribune Cycle Company relating to typewriting machines? A. Mr. Crean asked Mr. Gillelan if he was the manager of the typewriter department. He said he was. Mr. Crean then stated that he came at the suggestion of a Mr. Johnson in Washington, who had seen him some time before.

Mr. Gillelan stated he remembered Mr. Johnson, 751
and that the machine referred to in their conversation, that is between Mr. Johnson and Mr. Gillelan, was an improved Remington. Mr. Crean repeated, "Is this an improved Remington"? and Mr. Gillelan replied that it was. I have a memorandum here which I would like to refer to. He also said it was manufactured by the former manufacturers of the old Remington, and was also invented by the inventors of the old Remington. Mr. Crean also asked the question: "Is this a Remington machine"? To this question Mr. Gillelan answered "Yes." The whole tenor of the conversation between Mr. Gillelan and Mr. Crean was to the effect that the machine was a Remington, what I mean by that is, a 752
standard machine, manufactured by Wyckoff, Seamans & Benedict. Mr. Gillelan further stated that Mr. Remington and Mr. Sholes, the names that are used on the Remington and Sholes machine, formerly made the old Remington, and that they sold the old Remington some time ago to people known as Wyckoff, Seamans & Benedict, and that the latter people were then making the old Remington (I mean at the time of our conversation). So that the old Remington is no longer manufactured by the Remington people at all, but by the three men named, and that the only typewriter which the Remington people are now manufacturing is the Remington-Sholes; so that his (meaning Mr. Gillelan's machine) 753
was *the* Remington machine. Mr. Crean said that he had been informed by Mr. Johnson, of Washington, that he had been informed by the Tribune Cycle Company that the machine they were selling was an improved Remington, manufactured by the Remington people who formerly made the old Remington. Mr. Gillelan replied that Mr. Johnson's statements were correct. He further stated that the Tribune Cycle Company purchased the machines through the Howe Scale Company of Rutland, whose agents they were for Baltimore and vicinity.

13 Q. In giving your testimony you have referred

754 to a memorandum for the purpose of refreshing your recollection concerning the interview which took place between Mr. Gillelan and Mr. Crean. Please state when the memorandum to which you referred was made? A. Immediately after Mr. Crean's conversation with Mr. Gillelan.

CROSS-EXAMINATION by Mr. Fisher:

1 x-Q. During the course of your direct-examination you have had in your hand a memorandum consisting of two typewritten sheets. Please say by whom this memorandum was made; I mean the memorandum from which you read? A. The
755 memorandum was made at my suggestion by Mr. Crean immediately after the interview with Mr. Gillelan.

2 x-Q. Was the memorandum made by you; I mean was it written by you? A. The typewriting was not done by me, but by Mr. Crean.

3 x-Q. How many copies of that memorandum were made by Mr. Crean? A. One original and a duplicate.

4 x Q. And you took one copy and Mr. Crean the other; is that correct? A. Yes, sir.

5 x-Q. Was the memorandum made in your presence by Mr. Crean? A. It was.

6 x-Q. How soon after the interview with Mr. Gil-
756 lelan was it before the memorandum was made? A. Within an hour. It was made at once.

7 x-Q. Had you ever visited the office of the Tribune Cycle Company before the time of that conversation? A. I did not.

8 x-Q. Had you ever met Mr. Gillelan before? A. Not to my knowledge.

9 x-Q. On the memorandum to which you have referred in giving your direct testimony, I find the following: "I asked Mr. Gillelan the direct-question, 'Is this an improved Remington'? To which he replied, 'Yes, it is, the *new* Remington; it is manufactured by the former manufacturers of the

old Remington (meaning the *Remington Standard*), and it was invented by the inventors of the old Remington.'" Kindly explain how the memorandum happens to contain this expression, "*I* told him, &c." A. Although the memorandum was written at my suggestion, the conversation was carried on by Mr. Crean; hence, the use of the pronoun *I*, meaning Mr. Crean. 757

10 x-Q. Did you see any typewriting machines at the time of your visit to the Tribune Cycle Company's office? A. I did.

11 x-Q. What kind of machines were they? A. If I am not mistaken, the machine bore the name of Rem-Sho.

12 x-Q. Do you remember any other words or marks that were upon the machine? A. I do not. 758

13 x-Q. You have stated that at the time of your visit to the place of business of the Tribune Cycle Company you noticed advertising media, such as catalogues, &c. State who showed you these catalogues, &c., and what they were. A. No one. I took the liberty of picking one off the stand, and scanning its contents. The catalogues in question set forth in detail, as I remember it, the Rem-Sho machine.

14 x-Q. What name, if any, did you give at the time you made your visit to the office of the Tribune Cycle Company? A. No name whatever.

15 x-Q. Did Mr. Crean give any name? A. He did not. 759

16 x-Q. Is it not a fact that Mr. Gillelan said, in substance, that the Rem-Sho machine was an improvement on the old Remington? A. No, it is not. I was put under the impression by Mr. Gillelan that his machine had no connection whatever with the Standard Remington, but, as he stated in answer to a question of Mr. Crean's, that "it was an improved Remington."

17 x-Q. Did not Mr. Gillelan tell you, or say in your presence, that the Rem Sho machine was manufactured by the Remington-Sholes Company

760 of Chicago? A. (Witness says: "Please let me have my memorandum.") Mr. Gillelan stated that Mr. Remington and Mr. Sholes formerly made the old Remington. He did not say, if I recollect, that it was made by the Remington-Sholes people.

18 x-Q. You saw by the catalogue, did you not, by whom the Rem-Sho machine was manufactured? A. No, I did not; at least I do not recollect anything that was in the catalogue.

19 x-Q. Did Mr. Gillelan tell you the names of the parties who at that time were making the Remington Standard Typewriter, or did Mr. Crean mention the names of Wyckoff, Seamans & Benedict? A. No mention was made of these two names by
761 Mr. Crean or Mr. Gillelan, with the exception that Mr. Gillelan stated that they were agents for the Howe Scale Company, of Rutland, Vt.

20 x-Q. You are positive, are you, that the name of Wyckoff, Seamans & Benedict was not mentioned during that conversation? A. The name of Wyckoff, Seamans & Benedict was mentioned once, as I remember, by Mr. Gillelan.

21 x-Q. In what connection? A. Wherein he stated that Mr. Remington and Mr. Sholes had sold the old Remington to the people mentioned.

22 x-Q. And did Mr. Gillelan state that said latter people were then making the Remington Typewriter? A. I think he did.

762 23 x-Q. Did not Mr. Gillelan say that the Rem-Sho machine was invented by the sons of the inventors of the old Remington machine? A. No mention whatever was made of Mr. Remington's sons. Neither the words "sons" nor "fathers" was used.

24 x-Q. Did not Mr. Gillelan say in substance that the Mr. Sholes, whose name was associated with the Rem-Sho machine, was the son of the inventor of the old Remington? A. Not to my knowledge; he did not.

25 x-Q. Did he not say, in substance, that the Mr. Remington, whose name was associated with

the Rem-Sho machine, was the son of the Reming- 763
ton, who formerly manufactured the old Reming-
ton? A. He did not.

26 x-Q. Did Mr. Gillelan show you the Rem-Sho machine, and describe any advantages that it possessed over the Remington machine? A. The machine was shown to Mr. Crean, not to me.

27 x-Q. Did you hear Mr. Gillelan describe to Mr. Crean any of the advantages of the Rem-Sho machine over the Remington typewriter? A. I did.

28 x-Q. Who was present at the time of the interview between yourself, Mr. Crean, and Mr. Gillelan, at the office of the Tribune Cycle Company? A. If I am not mistaken, there were two or three gentlemen in the rear of the store during the interview. 764

29 x-Q. Did you or did Mr. Crean meet any of these gentlemen? A. We did not; neither of us.

30 x Q. Did not Mr. Crean ask Mr. Gillelan, "Is not this the office of the Remington Typewriter Company?" A. According to my recollection, I think he did.

31 x-Q. And did not Mr. Gillelan say in substance that it was the office of the Remington-Sholes typewriter, and that he was handling the Remington-Sholes machine in Baltimore? A. According to my recollection Mr. Gillelan answered that that was the office of the improved Remington, the Rem-Sho machine.

32 x-Q. Did Mr. Gillelan not say in substance, 765
"I handle the Remington-Sholes typewriter, which is an improvement on the Remington"? A. He did not.

32 x-Q. And you do not recollect whether or not he said that that was the office of the Remington-Sholes Company? A. I do not.

33 x-Q. Before you called upon Mr. Gillelan, had you learned that it was for the purpose of obtaining evidence to be used against the Remington-Sholes Company? A. No, sir.

34 x-Q. What did you understand to be the pur-

766 pose of your visit or of Mr. Crean's visit? A. Just merely as a witness to Mr. Crean's conversation.

34 x-Q. But you understood that Mr. Crean was visiting Mr. Gillelan for the purpose of obtaining evidence and that he took you so that you might be used as a witness also? A. It was only explained to me that there was a new Remington on the market in Baltimore, and I was asked to accompany Mr. Crean, as I said before, just as a witness. It was only after conversation that I was inclined to believe that I would at some time probably be used as a witness; hence my suggestion to Mr. Crean to make the memo. to which I refer now and then.

35 x-Q. By whom were you paid for that service
767 in Baltimore? A. I was not paid by any one.

36 x-Q. Do you expect to be paid by any one? A. I naturally expect to be paid, if I give my time to it, although nothing has been said about it.

REDIRECT-EXAMINATION:

1 RD-Q. Calling your attention to the memorandum to which you have referred in giving your testimony, I ask you if this memorandum consisting of two sheets of typewriting is the duplicate of the memorandum which was made by Mr. Crean in your presence, after your interview and that of Mr. Crean with Mr. Gillelan on the 4th of October, 1898?
768 A. It is.

2 RD-Q. At the time this memorandum was made were the facts, that is to say, what was said and done on the occasion of your visit to the office of the Tribune Cycle Company, fresh in your mind? A. They were.

3 RD-Q. And did you know that memorandum as then made of what was said and done and what occurred to be correct? A. I did.

The memorandum which has been referred to by the witness, consisting of two typewritten sheets, is marked for identification, "Complain-

ant's Exhibit Lewis Memorandum, October 4, 1898." 769

ROGER E. LEWIS.

Sworn to and subscribed before me this 5th day of May, 1899.

HORACE A. DODGE,
Notary Public and Special Examiner by Stipulation and Consent.

[NOTARY'S SEAL.]

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SARAH B. DANAHER, a witness of lawful age, called on behalf of complainant, being duly cautioned and sworn, testified as follows: 770

1 Q. State your name, age, residence and occupation. A. Sarah B. Danaher; 27, I think; Washington, D. C.; stenographer and typewriter.

2 Q. State where you are now engaged in the occupation of stenographer and typewriter. A. At Wyckoff, Seamans & Benedict, Eighth and F streets, this city.

3 Q. Have you ever met Mr. Thomas F. Crean, and do you know that gentleman? A. Yes, sir.

4 Q. Did you at any time visit any office in the City of Washington, in company with Mr. Thomas F. Crean, where the Remington-Sholes typewriter, or Rem-Sho typewriter, was exhibited? A. I did, sir. 771

5 Q. State when that visit occurred, as nearly as you now remember? A. As nearly as I remember it was the early part of October last year.

6 Q. Where was the office which you visited located? A. On Fourteenth street, I believe, between F and G, N. W.

7 Q. Who, if anybody, was in charge of the office, or appeared to be in charge of the office, on the occasion of your visit with Mr. Crean. A. A young man whose name I don't know, but who said he al-

772 tended to the business in the absence of Mr. Sholes, the manager.

8 Q. On the occasion of your said visit, did you notice in or about said office any typewriting machines, and, if so, did you notice what machines they were? A. I saw a Remington machine, and a Remington-Sholes machine.

9 Q. On the occasion of your visit, was there any conversation between Mr. Crean and the gentleman in charge of the Remington-Sholes typewriter office?

Objection. Counsel for defendant objects to the question, because it has not, and cannot be proven, that the person alleged to have been in charge of the Remington-Sholes office was an
773 employee of defendant, or of the Remington-Sholes Company, or in any manner associated or connected with either of said parties.

A. There was.

10 Q. Did you, on the occasion of your visit with Mr. Crean, notice any other person present in or about the office than the gentleman who talked with Mr. Crean on that occasion? A. I did not notice any one.

11 Q. Please state what conversation occurred between Mr. Crean and the gentleman in charge of said office, if any, in reference to typewriting machines.

774 Same objection as to question 9.

A. Well, this is in substance what I heard: The gentleman in charge said that the Remington-Sholes machine, which he showed Mr. Crean, was manufactured by the same people who made the Remington machine; that the reason why it was sold for $90 or $95, I do not remember which figure, was, because it was not in the trust.

12 Q. Do you now recall whether anything was said in that conversation as to who were the inventors of the Remington-Sholes machine, and as to

their relation or connection with the Remington typewriter? 775

Same objection.

A. That it was made by the same people who made the Remington machine.

CROSS-EXAMINATION by Mr. Fisher:

1 x-Q. What kind of an office was it that you and Mr. Crean visited; I mean, was it given up entirely to the Remington-Sholes machine exhibit, or did it seem to be occupied for other purposes also? A. I only saw these machines there; the Remington and the Remington-Sholes.

2 x-Q. Was it not the office of Brice & Lipscomb, 776
No. 612 Fourteenth street? A. I do not recall that it was that number, it was on Fourteenth street.

3 x-Q. Do you recall whether it was the office of Brice & Lipscomb, the real estate agents or not? A. I do not, sir.

4 x-Q. Did the entire office appear to be occupied by the Remington-Sholes Company, or did it appear to be occupied by others also? A. Why, I didn't notice that it was occupied by more than one office.

5 x-Q. How many machines did you see at the time of your visit with Mr. Crean? A. I saw two machines only.

6 x-Q. Did you examine the Remington-Sholes machine? A. Simply looked at it. 777

7 x-Q. Did you observe any name upon it? A. I don't remember.

8 x-Q. Did you hear any one say at the time of your visit, concerning which you have testified, that the Remington-Sholes machine was better than the machine manufactured by Wyckoff, Seamans & Benedict, or was a better machine than the Remington Standard machine? A I do not recall that.

9 x-Q. Did not the young man who talked with Mr. Crean make any statement as to the superiority

778 of the Remington-Sholes machine over the Remington Standard? A. I don't remember.

10 x-Q. Did not the young man say to Mr. Crean that Mr. F. L. Sholes was the Washington agent for the Remington-Sholes machine? A. I did not hear him say it.

11 x-Q. Did not the young man say to Mr. Crean that the gentleman, who had charge of the business of the Remington-Sholes Company, was out of the office? A. He said Mr. Sholes, I think, was out of the office, and that he attended to business during his (Mr. Sholes) absence.

12 x-Q. Did the young man say to Mr. Crean that the Remington-Sholes machine was made by the
779 Remington-Sholes Company? A. He said the Remington-Sholes machine was manufactured by the same people who made the Remington machine.

13 x-Q. You are positive that he said that the Remington-Sholes machine was manufactured by the people who at that time were making the Remington machine? A. I am positive that he said the Remington-Sholes machine was manufactured by the same people who made the Remington machine.

14 x-Q. Did he not say that the Remington-Sholes machine was manufactured by a son of one of the persons who originally manufactured the Remington machine? A. No, sir; not as I recall.

15 x-Q. You are positive, are you, that the lan-
780 guage he used was to the effect that both the Remington Sholes machine and the Remington Standard machine were being made at that time by the same persons? A. I inferred from what he said that the Remington-Sholes machine was made by the same people who made the Remington machine.

16 x-Q. You mean that you inferred from what he said that both the Remington-Sholes machine and the Remington machine were being made, at that time, by the same persons? A. Yes, sir.

17 x Q. Were you shown any catalogues or circulars at that time? A. I do not remember.

18 x-Q. You do not recall whether you saw any or not? A. No, I do not recall. 781

19 x-Q. What did you understand that the young man meant when he said that the reason why the Remington was sold for $80 or $85 was because it was not in the trust? A. Well, I didn't know what he meant by the trust.

20 x-Q. Did the young man explain any advantages of the Rem-Sho machine over any other machines? A. I think he did over the Remington machine?

21 x-Q. Do you recall whether he stated by whom the Remington machine was made? A. I do not recall.

22 x-Q. Do you recall whether he stated how much cheaper the Remington-Sholes machine could be bought than the Remington? A. For $80 or $85. I do not remember which figure. 782

23 x-Q. And he stated that such price was less than that at which the Remington was being sold, did he? A. Yes, sir.

24 x-Q. Do you recall whether the name of Wyckoff, Seamans & Benedict was mentioned or not, during the conversation, concerning which you have testified? A. I do not recall, sir.

25 x-Q. Did the young man say to you, or to Mr. Crean, that the Remington machine was being manufactured by the trust or the Typewriter Trust, or by a "Combination," and that for this reason the Remington-Sholes machines could be sold for a less price than the Remington Standard machine—the Remington-Sholes machine being outside of, or not controlled by any combination? A. I heard him say that the Remington-Sholes machine was being manufactured by the same people as the Remington machine. 783

26 x-Q. Now will you please answer my question? A. I can only say what I have just said.

27 x-Q. Can you not state whether the young man said that the Remington-Sholes machine was not controlled by any combination or trust? A. He said

784 the Remington-Sholes was not in the trust, and that was the reason why it was sold for so much less than the Remington.

28 x-Q. If I understand you correctly, therefore, the young man said in substance that the Remington-Sholes machine was not in the trust, and for this reason they were able to sell such machines at a lower price than that at which the Remington machine was being offered for sale?

The question is objected to as improper, because the witness has already stated what she remembered and all she remembered concerning the matter inquired about.

785 A. That it is to the best of my recollection.

29 x-Q. Have you refreshed your memory in any way in regard to the conversation concerning which you have testified, since such conversation occurred? A. Yes, sir.

30 x-Q. In what manner? A. I have tried to recall, as best I could, what was said during that conversation.

31 x-Q. Is that the only way in which you have refreshed your memory? A. No, sir.

32 x-Q. Please state in what other way you have done so, and when? A. This morning I read over a little memorandum which was taken shortly after the conversation.

786 33 x-Q. By whom was such memorandum made, and what did it contain? A. It was made by Mr. Crean, and contained in substance what I have said.

REDIRECT-EXAMINATION:

1 RD-Q. Defendant's counsel has asked you concerning a memorandum which you say was made by Mr. Crean, and which memorandum you say you read over or looked at this morning, and before testifying in this case. When was such memorandum made by Mr. Crean? A. About ten or fifteen minutes after the conversation between Mr. Crean

and the young man at the Remington-Sholes office. 787

2 RD-Q. Did you see the memorandum at the time it was made or just after it was made by Mr. Crean? A. I saw it directly after it was made by Mr. Crean.

3 RD-Q. Did you read it? A. Yes, sir.

4 RD-Q. Was the memorandum which you then saw and read in accordance with your recollection at that time? A. Yes, sir.

RECROSS-EXAMINATION:

1 Re-x-Q. In whose possession has the memorandum been since it was made? A. I don't know.

SARA B. DANAHER. 788

Sworn to and subscribed before me this 5th day of May, 1899.

HORACE A. DOIGE,
Notary Public and Special Examiner by Stipulation and Consent.

[NOTARY'S SEAL.]

ELIZABETH WILSON, a witness of lawful age, called on behalf of complainant, being duly cautioned and sworn, testified as follows:

1 Q. State your name, age, residence and occupation? A. Elizabeth Wilson; age, 32 years; residence, 108 G street, N. W., Washington, D. C.; occupation, clerk and typewriter in the United States D. trict Attorney's office. 789

2 Q. How long have you been an operator upon a typewriting machine? A. Ten years.

3 Q. What machine or machines have you been accustomed to operate? A. Only the Remington.

4 Q. Have you ever seen or operated a machine called the Remington-Sholes or the Rem-Sho typewriter? A. No, sir.

5 Q. Has your attention in any way ever been called to a machine designated Remington-Sholes or Rem-Sho? A. Yes, sir.

790 6 Q. When and under what circumstances? A. Last fall, by letter.

7 Q. What machine, if any, did the letter you saw last fall refer to?

Counsel for defendant objects to the question, as calling for secondary evidence, since the letter itself, if in existence, is the best evidence.

A. I am under the impression that it referred to the Remington-Sholes.

8 Q. Did you at that time read the said letter? A. I did.

9 Q. Do you now remember whether the letter referred to the Remington-Sholes or Rem-Sho type-
791 writer?

Counsel for defendant objects to the question as calling for secondary evidence and for the reason that the witness has already answered a question of like import.

A. Well, I can't say exactly as to that. It has been quite a while ago since I read the letter, but I know that it did refer to it as the Rem-Sholes.

10 Q. What impression was made upon your mind, if any, as to the origin of the machine referred to in said letter, or as to the concern by whom it was manufactured?

792 Counsel for defendant objects to the question as irrelevant and immaterial, and for the further reason that the letter itself is the best evidence as to its contents, and the impressions properly derivable therefrom.

A. I naturally inferred that it was a machine which was being put out by the firm which had manufactured *the* Remington machines, and that the name Sholes, or word Sholes, was the name of the man who had made some very important improvements, and therefore his name had been used in connection with the old Remington typewriter; and naturally that the Remington-Sholes, better

known as the Rem-Sho, was an improved Remington typewriter. 793

CROSS-EXAMINATION by Mr. Fisher:

1 x-Q. Will you please state the date of the letter concerning which you have testified, and to whom the letter was addressed? A. I can't give you the exact date; I can say, however, that it was the latter part of last summer or the early part of last fall; and either to Henry E. Davis, the U. S. District Attorney of the District of Columbia, or the Attorney-General of the United States, and was a circular letter.

2 x-Q. Where is that letter at the present time? A. I cannot say.

794

3 x-Q. When did you last see it? A. Last fall or the latter part of last summer.

4 x-Q. And where? A. In the office of the U. S. District Attorney.

5 x-Q. And you do not know what has become of it? A. I am under the impression that I forwarded the letter to Mr. Buckelew, the manager of the Remington typewriter office in Washington, but I won't swear to that.

6 x-Q. Was the letter written upon a letter sheet having a printed heading? A. My impression is that it was; it was a circular letter, and they are usually written that way.

7 x-Q. Could you identify the letter, or a copy of it, if it were shown you? A. As the letter that I saw? 795

8 x Q. Yes? A. I think I can.

9 x-Q. I show you a printed letterhead of the Remington-Sholes Company, and ask you to state whether or not the letter to which you have referred, was written upon a sheet of paper having a heading like this? A. I cannot say; I won't swear as to that.

10 x-Q. I now show you a letter press copy of a letter addressed to Harry E. Davis, Esq., U. S. District Attorney, Washington, D. C., under date

796 of October 7, 1898, and reading as follows: "Dear Sir: We received the award for furnishing typewriters for the Department of Justice for the coming year. We take pleasure in sending you under separate cover a catalogue.

Should you be in need of anything in this line, we will be pleased to receive your order through the Department of Justice.

Yours very truly,

REMINGTON-SHOLES COMPANY,

F. L. SHOLES, Mgr."

Please state how this letter compares with the one which you say was received by the U. S. District
797 Attorney at Washington? A. I will not swear that that is the same letter that I saw. I told you that I did not know whether the letter that I saw was addressed to the U. S. District Attorney, or whether it was addressed to the Attorney General of the U. S. In the letter which I read, I thought that it said--I think that it said, that the Remington-Sholes, or Rem-Sho Company had the contract for the entire thirty machines which the Attorney General ordered every year; but I won't swear that this is a copy of the letter that was handed to me. The context of this letter is very much like the one that I saw.

11 x-Q. Please state how the letterhead that I
798 now show you compares with that of the sheet on which was written the letter concerning which you have testified? A. I cannot testify as to that, as I said before in answer to your other question, I will not swear that that is the same letterhead.

12 x-Q. Do you remember whether the letterhead of the letter concerning which you have testified contained the picture of the typewriter, as in the letterhead I now show you? A. I think that that is the letterhead, but I will not swear that that is the letterhead.

Counsel for defendant offers in evidence the letterhead shown to witness, and the same is

marked "Defendant's Exhibit Remington-Sholes Company Letterhead." 799

REDIRECT-EXAMINATION by Mr. Donnelly:

1 RD-Q. Is it not a fact that your seeing the name Remington in this letter, or circular letter, made a strong impression or made any impression upon your mind as to the origin of the machine referred to therein?

Counsel for defendant objects to the question as immaterial and irrelevant, since the letter itself is the best evidence as to its contents, and as to impressions properly derivable therefrom.

A. I must have seen it some place, either on the letterhead or in the body of the letter itself, for an impression of any sort to have been made; and an impression was made by seeing the word "Remington." 800

2 RD-Q. Do you know, or are you now able to say where the letter is to which you have referred in your direct testimony? A. My impression is that I sent that letter to Mr. Buckelew, but I won't swear as to that.

3 RD-Q. If Mr. Buckelew has not the letter now in his possession, do you know where it is? A. More than likely consigned to the flames.

4 RD-Q. Do you think you could find the said letter in the office of the District Attorney, where you saw it? A. I don't believe I could. I know I couldn't. 801

RECROSS-EXAMINATION by Mr. Fisher:

1 Re-x-Q. Have you made any search for that letter? A. No, sir.

Adjourned to permit witness to make search for letter.

802 1 RD Q. Have you visited the District Attorney's office and made search for the letter to which you have referred in your testimony, and have you been able to find the same? A. I have been to the office and made diligent search, but have been unable to find the letter.

Signature of witness waived by counsel for the respective parties.

JOSHUA R. BUCKELEW, a witness, of lawful age, called on behalf of complainant, being duly cautioned and sworn, testified as follows:

1 Q. State your name, age, residence and occupa-
803 tion? A. Joshua R. Buckelew, 48 years, 1450 Kenesaw Ave., Washington, D. C.; manager, Wyckoff, Seamans & Benedict, Washington office.

2 Q. Have you now in your possession or under your control, or do you know anything concerning any letter or circular letter addressed to Henry E. Davis, U. S. District Attorney, or the Attorney General of the United States referring to the Remington-Sholes or Rem-Sho typewriting machine so called? A. No.

3 Q. Have you any knowledge at present where any such letter can be found? A. I have not.

CROSS-EXAMINATION by Mr. Fisher:

804 1 x Q. Did you ever have such letter in your possession? A. No, sir.

2 x Q. Did you ever see such letter? A. No, sir.

JOSHUA R. BUCKELEW.

Sworn to and subscribed before me this 5th day of May, 1899.

HORACE A. DODGE,
Notary Public and Special Examiner by Stipulation and Consent.

[NOTARY'S SEAL.]

CIRCUIT COURT OF THE UNITED STATES, 805

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS and BENEDICT,
Complainant,

vs.

HOWE SCALE CO. of 1886,
Defendant.

In Equity.

806

DISTRICT OF COLUMBIA, }
City of Washington, } ss.:

I, HORACE A. DODGE, Notary Public in and for the said City of Washington and District of Columbia, duly commissioned and sworn, and Special Examiner pursuant to stipulation and agreement of the respective parties to the above entitled cause, hereto annexed, do hereby certify that on the 5th day of May, A. D. 1899, named in the testimony, evidence and depositions hereto annexed, I was attended at Room 1, in building No. 700 Ninth street, N. W., in the City of Washington, D. C., by Messrs. H. D. Donnelly, counsel for complainant, and George P. 807
Fisher, Jr., counsel for defendant, and Roger E. Lewis, Sarah B. Danaher, Elizabeth Wilson and Joshua R. Buckelew, witnesses for complainant, as appears by the documents and proceedings hereto annexed; that the said witnesses, Roger E. Lewis, Sarah B. Danaher, Elizabeth Wilson and Joshua R. Buckelew, were duly cautioned and sworn to testify the whole truth and carefully examined, and their depositions were reduced to typewriting by Miss Julia M. Pond in their presence and read to them by her, and by them signed in my presence and in the presence of all of said counsel; that said Julia M.

808 Pond is a skillful typewriter, and by consent of counsel said depositions and testimony hereto annexed were typewritten by her at the time they were taken; that the following exhibits, to wit:

"Complainant's Exhibit, Lewis Memorandum, Oct. 4th, 1898,"

"Defendant's Exhibit, Remington-Sholes Company Letterhead,"

were introduced in evidence and are identified by my initials.

I further certify that I am not of counsel or attorney to either of the parties, nor interested in the event of the cause, nor am I related by blood or
809 marriage to any of the officers of the complainant, nor to the defendant in this suit, or its officers or members.

I further certify that I have authenticated by my signature and notarial seal the said depositions and proceedings aforesaid.

In testimony whereof, I hereunto set my hand and official seal this 6th day of May, A. D. 1899.

HORACE A. DODGE,
Notary Public and Special Examiner
by stipulation and consent.

[NOTARY'S SEAL.]

{ Canceled 10c. }
810 { Revenue Stamp. }

District of Columbia, ss.:

I, JOHN R. YOUNG, Clerk of the Supreme Court of the District of Columbia, the same being a court of record, do hereby certify that Horace A. Dodge, Esq., whose name is subscribed to the certificate of the proof or acknowledgment, of the annexed instrument and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for said district, duly commissioned

and sworn, and authorized by the laws of said district to take the acknowledgments and proofs of deeds or conveyances for land, tenements, or hereditaments and administer oaths, in said district. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine. 811

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at the City of Washington, D. C., the 6th day of May, A. D. 1899.

JOHN R. YOUNG,
Clerk.

[SEAL.]

{Canceled Revenue 10c stamp.} 812

813

814 UNITED STATES CIRCUIT COURT.

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

vs.

THE HOWE SCALE COMPANY OF 1886.

815 TESTIMONY taken on behalf of complainant before Lynden Evans, a notary public in and for the County of Cook, and State of Illinois, acting as Special Examiner by consent under and pursuant to the annexed stipulation, at the office of Josiah McRoberts, number 107 Dearborn street, Chicago, Illinois, on the 13th day of June, 1899, at 2.30 o'clock P. M.

APPEARANCES:

H. D. DONNELLY, Esq., and JOSIAH MCROBERTS appearing for Complainant.

GEORGE P. FISHER, Esq., appearing for De-
816 fendant.

CHARLES H. COOKE, called as a witness on behalf of the complainant, of lawful age, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Charles H. Cooke; age, 39; treasurer of the Dr. Becker Compound Digest Company, a corporation having office in this building: residence, Chicago.

2 Q. Have you at any time examined the files of any newspaper published in the City of Chicago, and, if so, when and for what purpose? A. In February of this year I examined the files of the *Chicago Tribune* for the years 1892 to 1898, inclusive. The object of this examination was to show how different typewriters were mentioned in advertisements. I looked over the advertising columns of the Sunday edition only, and examined the classified advertisements under the following heads: 817

Situations Wanted—Stenographers; Male.
Situations Wanted—Stenographers; Female.
Help Wanted—Stenographers; Male.
Help Wanted—Stenographers; Female.
Typewriters. 818

3 Q. What typewriting machines, if any, did you find were referred to in the advertisements you examined between the years 1892 and 1898, both inclusive? A. I found the name of the Remington machine most frequently referred to, there was also reference to several other makes.

4 Q. Did you examine the files of the *Chicago Tribune* between the years 1892 and the year 1898, both inclusive, for the purpose of ascertaining the number of times the so-called Remington machine was referred to in the advertisements contained in said newspaper, and if so, state the results of your examination? A. I examined the *Chicago Tribune*, for the period mentioned, for the purpose of ascertaining how many times the Remington machine was referred to under the said classified headings. I counted eight thousand two hundred and ten (8,210) advertisements in which the word "Remington" occurred, and eight hundred and thirteen (813) advertisements in which the word "Rem" was used. 819

5 Q. Are you able to state the number of such advertisements in the respective years, 1892 and 1898 inclusive, and if so, you may give the number in each year which make up the total numbers which

820 you have given? A. The words "Remington" and "Rem" occur as follows:

| | | | | | | |
|---|---|---|---|---|---|---|
| 1892, | "Remington" | 1,247 | times, | "Rem" | 29 | times. |
| 1893, | " | 1,301 | " | " | 30 | " |
| 1894, | " | 966 | " | " | 43 | " |
| 1895, | " | 1,240 | " | " | 111 | " |
| 1896, | " | 1,277 | " | " | 120 | " |
| 1897, | " | 1,146 | " | " | 176 | " |
| 1898, | " | 1,033 | " | " | 304 | " |

This makes the totals above given.

6 Q. What was the character of the advertisements in the *Chicago Tribune* which you examined? Were they advertisements inserted by operators, or
821 by persons who had typewriting machines for sale, or by persons wanting operators? A. These advertisements were inserted by persons who wished to obtain positions as stenographers and typewriter operators; by firms desiring to employ such persons; and by people having for sale or wishing to buy machines.

CROSS-EXAMINATION by Mr. Fisher:

7 x-Q. In your examination of the files of the *Chicago Tribune* you found various other typewriters advertised, did you not? A. I did.

8 x-Q. Did you notice what abbreviations, if any,
822 were used in designating such other typewriting machines? A. As I remember the Smith Premier Typewriter was sometimes designated as "S. P.," or sometimes "Smith," and the Remington-Sholes machine referred to as "Rem-Sho."

(Signed) CHARLES H. COOKE.

Subscribed and sworn to before me this 13th day of January, A. D. 1899.

LYNDEN EVANS,

[NOTARY'S SEAL.] Notary Public.

WILLIAM H. HARMON, of lawful age, a witness called on behalf of the complainant, being duly sworn, testified as follows: 823

1 Q. State your name, age, residence and occupapation? A. William H. Harmon; age, 34; residence, Chicago, Illinois, and occupation clerk in the employ of Wyckoff, Seamans & Benedict.

2 Q. How long have you been in the employ of Wyckoff, Seamans & Benedict, and where have you been so employed? A. Two years and two and a half months, at Chicago, Illinois.

3 Q. Since you have been in the service of Wyckoff, Seamans & Benedict, in the City of Chicago, what have been your duties? A. From April 1, 1897, until August 14, 1897, I was employed by Wyckoff, Seamans & Benedict as city salesman. Since that I have been employed as manager of the employment department of said firm. 824

4 Q. What have been the character of your duties since you have been in charge of the employment department in the office of Wyckoff, Seamans & Benedict, in the City of Chicago? A. my chief duty has been to supply business men with stenographers.

5 Q. Do stenographers and typewriters, and persons who want situations as such, visit the office of Wyckoff, Seamans & Benedict for the purpose of obtaining positions, and has such been the custom, or mode of business, during the time that you have been in charge of their employment department in Chicago? A. They do, and such has been the custom. 825

6 Q. Do stenographers and typewriters also make applications for positions by letters, or written communications, addressed to Wyckoff, Seamans & Bendict? A. Yes.

7 Q. Do the applications for situations made by stenographers and typewriters come within your department, and under your supervision? A. They do.

826 8 Q. How are these applications for situations made to Wyckoff, Seamans & Benedict? Are they made orally, or by letter, or by some written blank or communication? A. Applicants for stenographic positions are required to make their application in writing upon what is called a "Situation Wanted" blank.

9 Q. Have you any copies of such blanks here in court which you can produce? A. I have.

10 Q. By whom are these blanks for situations filled out? A. By stenographers when in search of positions.

11 Q. Have you here now in court any applications which have been made to Wyckoff, Seamans &
827 Benedict by stenographers and typewriters, or both, and if so, what year or years do they cover? A. I have. They cover the years 1897, 1898 and 1899. From June, 1897, to date.

12 Q. What, if anything, do these application blanks require the operator to state or set forth therein? A. Date of application, name of applicant, home address, age, nationality, number of years of experience as stenographer or typewriter, machines used, and other minor matters that do not now occur to me.

13 Q. Can you and will you produce an application blank such as is used by Wyckoff, Seamans & Benedict in their employment department in the
828 City of Chicago? A. Yes, and I now produce such blanks.

The witness now produces such blanks and the same are filed in evidence and marked "Complainant's Exhibits Harmon Application Blanks 1 and 2."

14 Q. Have you at any time examined the application blanks in the employment department of Wyckoff, Seamans & Benedict of Chicago, and if so, for what period of time? A. I have. From June, 1897, to February, 1899.

15 Q. For what purpose have you examined such

blanks? A. For the purpose of determining what 829
percentage of the applicants for stenographic positions used the word or abbreviation "Rem." and what percentage the word "Remington."

16 Q. Will you please state whether you have examined the application blanks in the employment department of Wyckoff, Seamans & Benedict, Chicago, for the purpose of ascertaining how frequently operators used the name "Remington" and the abbreviation "Rem." in such applications, and if so, state the result of your investigation in that regard? A. I have. For the period beginning June, 1897, and ending February, 1899, I found that of 4,101 applicants for stenographic positions within that time 3,806 used the word "Remington." One used 830
the word "Reming." Two used "Rem. St'd." Nine used "Rem. No. 2." Eight used "Rem. No. 6." 275 used "Rem."

17 Q. Have you the application blanks here in court from which you made up the statement which you have just given in your last answer? A. I have.

18 Q. I observe that you have only produced applications made by stenographers and typewriters since June, 1897. Why have you not produced those relating to earlier years, or dates? A. After a few years these applications are considered to be worthless and are not preserved by us.

The several applications referred to by the wit- 831
ness are here produced, but are not put in evidence because counsel does not wish to encumber the record by filing them as exhibits in this case.

CROSS-EXAMINATION by Mr. Fisher:

19 x-Q. Since you have been in the employ of Wyckoff, Seamans & Benedict has it been part of your work to supervise their advertising in the local newspapers? A. I supervise a part of it.

20 x-Q. Have you written, or supervised, any advertisements that have been inserted in the Sunday

832 edition of the *Chicago Tribune* under the heads of "Situations Wanted," "Help Wanted," or "Typewriters"? A. I sometimes insert an advertisement under the head of "Help Wanted," in the *Chicago Tribune*, but not under the other heads.

21 x-Q. In the advertisements that you have written, and caused to be inserted in the Sunday editions of the *Chicago Tribune*, have you used word "Remington," or the abbreviation "Rem." when referring to the Remington Standard Typewriter? A. To the best of my recollection, I never have used the word "Remington" in any advertisements which I have inserted, nor the abbreviation "Rem."

22 x-Q. Have you ever seen the abbreviation
833 "Rem." used in any advertisement before such advertisement was caused to be published? A. I do not recall that I ever have.

23 x-Q. In your examination of the application blanks you found that various other typewriting machines besides the Remington were sometimes designated by abbreviations, did you not? A. I did.

24 x-Q. State what you found to be the most common abbreviations for the various other machines upon the market? A. "S. P.," I presume for the Smith-Premier. "Rem-Sho," presumably for the Remington-Sholes. "Dens.," presumably for the "Densmore." I cannot say positively about the other machines.

834 25 x-Q. And you found, did you not, in your examination of the application blanks that where several machines were designated in the short blank space occuring after the words "what typewriters do you use," that such machines were often designated by abbreviations? A. I did.

(Signed.) WILLIAM H. HARMON.

Subscribed and sworn to before me this 13th day of June, A. D. 1899.

LYNDEN EVANS,
[NOTARY'S SEAL.] Notary Public.

Adjourned until Wednesday, June 14, 1899, 10 A. M.

CHICAGO, June 14, 1899, 10 A. M. 835

Parties met pursuant to adjournment.
Present—Counsel same as before.

JOHN S. BAYES, a witness called on behalf of the complainant, of lawful age, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation. A. John S. Bayes; 31 years old; live in Chicago; salesman for Wyckoff, Seamans & Benedict.

2 Q. How long have you been in the service of Wyckoff, Seamans & Benedict as a salesman in the City of Chicago? A. Since March 1, 1898. 836

3 Q. Prior to that time what was your occupation? A. Since January, 1892, with the exception of about ten months, typewriter salesman.

4 Q. Typewriter salesman for whom? A. Smith Premier Typewriter Company and the Jewett Typewriter Company.

5 Q. What have been your duties as typewriter salesman for Wyckoff, Seamans & Benedict in the City of Chicago? A. Soliciting and selling typewriters.

6 Q. And in soliciting and selling typewriters for Wyckoff, Seamans & Benedict, do you or not visit offices in the City of Chicago and come in contact with business people and with stenographers and 837 typewriters for the purpose of selling them typewriting machines, manufactured and sold by Wyckoff, Seamans & Benedict? A. I do.

7 Q. If you know, please state by what name, if any, the typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict are known to the trade and among purchasers and users in th City of Chicago? A. Why, they are called the Remington and are known as the Remington typewriter.

8 Q. Have you ever seen or examined a typewriting machine which is called the Remington-Sholes, or "Rem-Sho" typewriter? A. Yes, sir.

838 9 Q. During the time you have been in the service of Wyckoff, Seamans & Benedict, or have been selling typewriting machines in the City of Chicago, have you ever come in contact with people who made inquiry of you concerning the origin of the so-called Remington-Sholes typewriter?

Which question is objected to as immaterial, irrelevant and incompetent.

A. Yes, sir.

10 Q. What impression or idea did you find in mind of any people with whom you came in contact in selling typewriting machines, as to the origin or makers of the so-called "Rem-Sho" typewriter?

839 Same objection as to the last question.

A. Why, I have seen people who were under the impression that the machine was either made by Wyckoff, Seamans & Benedict or they were interested in its manufacture.

11 Q. Do you now recall the instances when any inquiry was made as to Wyckoff, Seamans & Benedict's connection with the so-called "Rem-Sho" typewriting machine?

The same objection as to the last question.

A. I don't recall any specific case. Say three or four years ago it was quite general.

12 Q. But you know as a fact, do you, that the inquiry has been made of you concerning the connec-
840 tion of Wyckoff, Seamans & Benedict with the so-called "Rem-Sho" or "Remington-Sholes" typewriter?

Same objection as to the last question, and the question is also objected to as leading.

A. Yes, sir.

Cross-examination waived.

(Signed) JOHN S. BAYES.

Subscribed and sworn to before me this 14th day of June, A. D. 1899.

LYNDEN EVANS,

[NOTARY'S SEAL.] Notary Public.

STEPHEN H. FARNHAM, a witness called on behalf 841
of the complainant, of lawful age, being duly sworn, deposes as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Stephen H. Farnham; thirty-six years of age; Chicago; salesman for Wyckoff, Seamans & Benedict.

2 Q. How long have you been in the service of Wyckoff, Seamans & Benedict as a salesman? A. With the exception of about six months, since March the 13th, 1891.

3 Q. Do you know a man by the name of C. Hansen? A. Yes, sir. 842

4 Q. Where does the man whom you know as C. Hansen reside? A. At Waukegan, Illinois.

5 Q. What is his business? A. He is proprietor of the Spencerian Business College.

6 Q. Where is his business college located? A. I do not know the number of the street; it is on Genesee street, in the business centre of Waukegan, Illinois.

7 Q. Are you acquainted with the handwriting of C. Hansen who resides at Waukegan, Illinois? A. Yes, sir.

8 Q. I show you several letters purporting to have been written by C. Hansen of Waukegan, Illinois, some of which contain the signature of C. 843
Hansen written with a pen and others signed with the typewriter. Will you please examine those letters and say, if you know, in whose handwriting the signature of C. Hansen is where it purports to have been signed with a pen?

(Letters handed to witness).

A. The letters signed by pen are signed by Mr. Hansen personally.

9 Q. Then the signature in script or signed by a pen are in the genuine handwriting of Mr. C. Hansen, are they? A. Yes, sir.

844 10 Q. About how long have you been acquainted with Mr. Hansen? A. About two years.

11 Q. Where did you first make his acquaintance? A. At Waukegan, Illinois.

12 Q. Have you ever visited his school or business college? A. Yes, sir.

13 Q. Do you know what makes or kinds of typewriting machines Mr. Hansen uses in his school at Waukegan Illinois? A. He had two Remington typewriters and an old Caligraph the last time I was there.

Cross-examination waived

(Signed.) STEPHEN FARNHAM.

845 Subscribed and sworn to before me this 14th day of June, A. D. 1899.

LYNDEN EVANS,
[NOTARY'S SEAL.] Notary Public.

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ALBERT D. BROWN, a witness called on behalf of the complainant, of lawful age, being first sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Name, Albert D. Brown; age, 49; resi-
846 dence, St. Paul, Minnesota; occupation, resident manager for Wyckoff, Seamans & Benedict.

2 Q. How long have you been resident manager for Wyckoff, Seamans & Benedict at St. Paul, Minnesota? A. Since May 1st, 1884.

3 Q. And what have been your duties as resident manager for Wyckoff, Seamans & Benedict at St. Paul, since 1884? A. I have had general charge of all the departments of their business there.

4 Q. Their business at St. Paul consists of what? A. Of selling the Remington typewriter and supplies.

5 Q. As manager for Wyckoff, Seamans & Bene- 847
dict at St. Paul, Minnesota, have you come in contact with purchasers and users of typewriting machines? A. Yes, sir.

6 Q. Do you know by what name, if any, the machines manufactured by Wyckoff, Seamans & Benedict and sold and offered for sale by them are known in the market, and by purchasers and users at St. Paul, Minnesota? A. I do.

7 Q. By what name, if any, are the machines manufactured and sold by Wyckoff, Seamans & Benedict known to the trade, and by purchasers and users in St. Paul, Minnesota? A. The Remington typewriter.

8 Q. Have you ever seen or examined a machine 848
called the "Remington Sholes," or "Rem-Sho" typewriter? A. Yes, sir.

9 Q. Have you ever known of a concern bearing the name of the Remington-Sholes Company? A. Yes, sir.

10 Q. Has the Remington-Sholes machine, or the so-called Rem-Sho typewriter been offered for sale at St. Paul, Minnesota? A. It has.

11 Q. Do you know whether there is any agency or place in St. Paul, or in any adjacent city, where the Remington-Sholes typewriter is offered for sale, and if so, state where such agency is located? A. There is. Their principal office being in Minneapolis, and, I believe, they have a little place where 849
they make headquarters in St. Paul.

12 Q. A place in St. Paul where the "Rem-Sho" machine is kept and offered for sale? A. I believe they have some machines there. I am not positive about that.

13 Q. During the time that you have been manager for Wyckoff, Seamans & Benedict at St. Paul, Minnesota, do you know of any instances where letters have been addressed to your concern under the name "Remington Typewriter," or "The Remington Typewriter Company," or a similar designation? A. Yes, sir, many of them.

850 14 Q. Covering what period of time have you received letters or correspondence thus addressed? A. Ever since I have been there.

15 Q. That is, ever since 1884? A. Yes, sir.

16 Q. How variously do letters come thus addressed, that is, are they always addressed "The Remington Typewriter Company"; or does the address vary somewhat, and if so, in what respect? A. We very frequently receive letters addressed to "The Remington Typewriter," "The Remington Typewriter Company," and "Remington Company."

17 Q. Do you know of any instance, or recall any instance, where the concern that you represent at
851 St. Paul, Minnesota, has received any letter or letters which were intended for the Remington-Sholes Company, or for the people or agents who are engaged in selling the so-called "Rem-Sho" machine? A. Yes, sir.

18 Q. How were such letters so addressed? A. The one I have in mind was addressed to "Rem-Sho Typewriter Company."

Defendant's counsel objects to and moves to strike out the answer of the witness and all similar answers in respect to the letter in question, unless said letter or letters are produced.

19 Q. What became of the letter, which you say
852 you received, addressed to the "Rem-Sho Typewriter Company"? A. I remailed it to them in Minneapolis.

20 Q. Have you ever seen said letter since you mailed it as stated in last answer? A. I have not.

21 Q. Do you now recall any instances in which purchasers, or persons who desired to examine or purchase the so-called "Rem-Sho" typewriter called at your place of business at St. Paul for the purpose of examining or purchasing the so-called "Rem-Sho" typewriter, or in the belief that the said "Rem-Sho" typewriter was sold by the concern that you represent? A. I do.

22 Q. Please explain the circumstances under 853
which such person or persons called at your place of business, believing or supposing that your concern sold or offered for sale the said "Rem-Sho" typewriter? A. About four months ago a gentleman by the name of Pierce, living at Rochester, Minnesota, called in our office in St. Paul, and he had with him a card that was either sent or left with him by the "Rem-Sho" people, and the card was printed "Remington-Sholes." He came in our office at St. Paul thinking that it was a branch of their office in Minneapolis, I suppose as that was the address that was on the card, and wanted to see that machine. We, of course, were unable to show him the "Rem-Sho," but did show him the "Remington."

23 Q. Do you now recall any other instance or in- 854
stances like that referred to by you in your last answer, and if so, please name them? A. I do not recall any just like that. I have had people ask me, "what about this new machine that you have recently put on the market"? and after talking with them I find out that they referred to the "Rem-Sho" machine.

24 Q. And associated the "Rem-Sho" machine with your concern, and as a product of its manufacture? A. I certainly think they did.

CROSS-EXAMINATION by Mr. Fisher:

25 x-Q. Can you give the name of the Mr. Pierce 855
referred to in your answer to direct-question 22? A. I am not quite sure of his initials. I think they are H. A.

26 x-Q. Did he show you the card of the Remington-Sholes Company that you say had been left with him, or sent to him? A. He did.

27 x-Q. State as nearly as you can recall, what appeared upon that card? A. I believe there was a cut of their machine and the words "Remington-Sholes Typewriter" and their Minneapolis address.

28 x-Q. What became of that card? A. I sent it to our New York office.

856 29 x-Q. Did not that card contain the words "Remington-Sholes Company, 127 Rees Street, Chicago"? A. I don't think it did.

30 x-Q. I show you a card bearing the name "Remington-Sholes Company, 127 Rees Street, Chicago," printed in black ink thereon, said card having also printed thereon in different colored ink a picture of a typewriting machine and the word "Rem.-Sho." and the word "Typewriter"; and said card having printed thereon also, at its top, the names "C. N. Fay, President, F. H. Head, Vice President, F. Remington, General Manager, J. V. Paulsen, Secretary and Treasurer," and having printed at its bottom the words "Branch Office, 132 Endicott Ar-
857 cade, St. Paul, Minn., Telephone 1607, Call 3, Presented by W. F. Ruehlman. Please state how this card compares with the card that was shown you by Mr. Pierce, as referred to in your direct-question 22? A. Looks very much like it.

31 x-Q. You may state, after examining such card, whether you still think that card shown you by Mr. Pierce did not contain the words "Remington-Sholes Company, 127 Rees Street, Chicago?" A. Probably it did.

Counsel for defendant states upon the record that the card shown the witness was one handed counsel by counsel for complainant after counsel for complainant had been asked if he had such a
858 card.

Complainant's counsel says, after the inquiry was made by defendant's counsel whether or not he had in his possession a card of the Remington-Sholes Company, he looked through his papers and found the card to which the witness' attention had been called by counsel for defendant. This card was pinned to a leter and complainant's counsel desires to retain the card in his possession in connection with the letter.

Counsel for defendant asks counsel for complainant whether he is willing that the card in

question should be produced at the hearing, and 859
if so, will request the notary to identify said card in proper manner.

Complainant's counsel states that he does not at present know just how or when he will use said card, but that if he does not introduce the same in evidence in this case he will cheerfully turn the same over to the defendant's counsel for such use as he may choose to put it to, and in order that this card may be identified as the card shown the witness, complainant's counsel will place his initials and date on the back thereof.

32 x-Q. In your answer to direct-question 23 you 860
state that you have had people ask you "about this new machine that we had recently put on the market, and after talking with them I find out that they referred to the Rem-Sho machine." Please state the names of such people and when the conversations with them occurred? A. I can't state any particular one, but I have had that question asked me a number of times within the last two years.

(Signed) ALBERT D. BROWN.

Subscribed and sworn to before me this 14th day of June, A. D. 1899.

LYNDEN EVANS,
[NOTARY'S SEAL.] Notary Public.

861

862 SILAS W. CRANDALL, a witness called on behalf of the complainant, of lawful age, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Age, 45; residence, Winnetka; occupation, manager of the Remington typewriter, Chicago.

2 Q. How long have you been manager of the Remington typewriter in the City of Chicago? A. Since 1883.

3 Q. What territory other than the City of Chicago, if any, comes within your supervision as manager of the Remington typewriter? A. At present
863 the east two-thirds of Iowa, upper half of Illinois and three counties about of northwestern Indiana.

4 Q. What are your duties as general manager of the Remington typewriter within the territory mentioned by you, I mean, of course, generally speaking? A. The management of all mercantile transactions so far as relates to any business whatever between the house and the public, the control of all employees, the management of the sales department connections, and in fact all departments necessary for the conduct of business.

5 Q. In the discharge of your duties as manager of the Remington typewriter, do you come in contact with operators and with users and purchasers
864 of typewriting machines? A. I do.

6 Q. You have stated that you are the manager for the Remington typewriter in the territory mentioned by you, in your previous answer, and I will ask you to state, for whom, if any one, you manage the sales, &c., of the Remington typewriter within the territory mentioned by you? A. For Wyckoff, Seamans & Benedict.

7 Q. Do you know by what name the machines manufactured and sold by Wyckoff, Seamans & Benedict are known in the trade and among purchasers and users of typewriting machines? A. I do.

8 Q. Please state by what name, if any, the type-

writing machines manufactured and sold by 865
Wyckoff, Seamans & Benedict are known in the trade and to purchasers and users of typewriting machines within the territory under your management? A. The Remington.

9 Q. I notice on the office or store window of Wyckoff, Seamans & Benedict in the City of Chicago, certain words referring to the machines and business of Wyckoff, Seamans & Benedict. Please say, if you know, how the machines sold are referred to upon the store window of Wyckoff, Seamans & Benedict in the City of Chicago, and for how long a period of time such a designation has been used upon the windows of Wyckoff, Seamans & Benedict's store in this city? A. "The Reming- 866
ton Typewriter," and the same sign lettering has been employed without change since May, 1892.

10 Q. Are you familiar with a typewriting machine called the "Remington-Sholes," or "Rem-Sho" typewriter? A. Yes, sir.

11 Q. About how long have you been familiar with that machine? A. Four years.

12 Q. In the course of your service with Wyckoff, Seamans & Benedict, in the management of the Remington typewriter in the City of Chicago and elsewhere, have inquiries ever been made of you concerning the origin of the so-called "Remington-Sholes" typewriter, or the Rem-Sho typewriter, and the connection of the makers of the "Remington" 867
typewriter therewith——

Counsel for defendants objects to the question as immaterial, irrelevant and incompetent, and as leading.

A. Yes, sir.

13 Q. What inquiry, if any, has been made of you or come to your knowledge concerning the origin of the "Remington-Sholes" typewriter, or "Rem-Sho" typewriter, and as to the connection, if any, of Wyckoff, Seamans & Benedict therewith.

The same objection as to the last question.

868 A. Many inquiries, not always the same, of a general character have been made. I do not recall specific cases.

14 Q. What was the character of the inquiries made concerning the origin of the so-called "Rem-Sho" typewriter, and what impression, if any, have you found in the mind of the public or any persons making inquiries concerning the origin of the "Rem-Sho" typewriter so called?

The same objection as to last question.

A. The inquiries were made by individuals, who were interested in the subject of typewriters, who called at our store, or who interrogated me in some
869 other place, public or private, regarding the advertisement of the company referred to, or regarding their location, their store or office, or regarding a call they had received from some agent, representative or salesman, as to what, if any, relation we had to the typewriter concern referred to in the question, whether the machine was made at our factory, or a factory with which our house had some connection, whether the officials of our company had any business connection with the typewriter company referred to in the question, whether, as in some cases, the machine called a "Remington-Scholes" or "Rem-Sho" was an improved "Remington." The impression in the mind of the inquirer was beyond
870 any question whatever an impression that the machine which was the subject of the inquiry possessed merit of manufacture in some degree of the same character as the Remington typewriter. There was without exception in the case of such inquiries referred to a confusion on the part of the inquirer as to the manufacture, and in some instances even of the sale of the so-called "Remington-Sholes" or "Rem-Sho," as distinct from the "Remington" typewriter.

15 Q. Did you or not find from your contact with the public, as you have stated, that there was an idea or impression in the mind of the public and of

purchasers or those who were interested in the pur- 871
chase of typewriting machines, that the so-called "Remington-Sholes" typewriter or "Rem-Sho" typewriter was a product of Wyckoff, Seamans & Benedict, or the people who manufacture and sell the "Remington" typewriter.

Same objection as to the last question.

A. Yes, sir.

16 Q. In your answer to direct-question 14, you say, among other things, "The impression in the mind of the inquirer was beyond any question whatever an impression that the machine which was the subject of inquiry possessed merit of manufacture in some degree of the same character as the Remington 872
typewriter." In that portion of your answer just quoted, do you or not mean to be understood as referring to a merit of manufacture imparted to the so-called "Remington-Sholes" typewriter or "Rem-Sho" typewriter in virtue of the impression of the public that the said "Rem-Sho" typewriter was a product of Wyckoff, Seamans & Benedict?

Same objection as to last question.

A. I certainly so intended to be understood.

17 Q. I show you a notice addressed to Remington-Sholes Typewriter Company and to the president and the officers and directors thereof, dated June 16, 1894, and I ask you to examine the same and tell 873
the Court whether you have ever seen the said notice before, and what, if any, connection you had therewith? (Paper handed to witness). A. I have seen this before. I served a paper identically the same as this in all respects, except for a statement on the bottom of this notice written by me, on C. E. Anderson, Secretary and Treasurer of the Remington-Sholes Typewriter Company, June 25th, 1894, in the City of Chicago.

The notice shown to the witness and identified by him as stated in his last answer is filed in evi-

874 dence and marked Complainant's Exhibit "Remington Sholes Notice June 16th, 1894."

18 Q. Do you recall the fact whether or not you did in or about the year 1897, serve a similar notice on the so-called Remington-Sholes Company? A. I recall visiting the offices of the Remington-Sholes, or Rem-Sho offices, on Rees Street, at least as long ago as 1897, and, my recollection is, serving a paper on Mr. Fay, of a paper of similar purport to the one filed relating to the use of the word "Remington" in combination or in abbreviation of the name "Remington," alone or in combination.

19 Q. I now call your attention to several letters,
875 purporting to be addressed to the Remington Typewriter Company, Chicago, Illinois, by one C. Hansen, of Waukegan, Illinois, and also one letter purporting to have been written by the Remington-Sholes Company to the said Hansen. Will you please state whether or not you are acquainted with Mr. Hansen, what his business is, where he resides, and what you know concerning said correspondence?

Papers handed to witness.

A. I don't know Mr. Hansen personally. The letters in my hands addressed to the Remington Typewriter Company to C. H. Hansen, three of the former, one of the latter, and one addressed to
876 Wyckoff, Seamans & Benedict, were received by us in due course of mail in an envelope addressed our house bearing the advertisement "Spencerian Business and Shorthand School, Waukegan." I know by common report, that Mr. Hansen was at the time the correspondence was dated, conducting a business college and shorthand school at Waukegan. Mr. Hansen purchased a typewriter of us some time prior to November 10th of the year 1898, paying a portion of the price of the machine in cash and giving us notes for the balance. He failed to meet his obligation promptly in the month of November, and his attention was called to that fact after a reason-

able time had elapsed, and he addressed us December 12th, stating that he had sent the remittance due in November in a letter addressed to the Remington Typewriter Company, Chicago. He received an acknowledgment of the remittance from the "Rem-Sho" Company. He thereupon, as he informed us in his letter of December 12th, requested the return of the money which had been received from him by the "Rem-Sho" Company and they returned the remittance enclosed in their letter of December 15th, addressed "C. H. Hansen, Waukegan," and signed "Remington-Sholes Company." They also returned to him his letter of November 15th, in which he made a remittance of $10, and the letter addressed to us by him November 15th, and addressed to him by the Remington-Sholes Company December 15th, were forwarded by him to us. 877 878

20 Q. Was it true as a fact that at the time Hansen addressed his letter to the Remington Typewriter Company, Chicago, Illinois, which letter bears date November 15, 1898, that Hansen was indebted to Wyckoff, Seamans & Benedict for a typewriting machine which they had sold to him? A. Yes, sir.

21 Q. And is it or not a fact to your knowledge, that the $10 remittance from Hansen to the Remington Typewriter Company was intended for Wyckoff, Seamans & Benedict? A. Yes, sir. 879

22 Q. Do you know whether or not Wyckoff, Seamans & Benedict, or its business, is ever referred to, or spoken of, by the name contained in Hansen's letters, to wit, "Remington Typewriter Company"? A. Yes, sir.

23 Q. Do you know whether or not Wyckoff, Seamans & Benedict have received letters at their Chicago office other than the letters of Mr. Hansen addressed to the "Remington Typewriter Company," or "Remington Typewriter," or by similar names? A. Yes, sir, many letters; probably no day passes

880 that we do not receive letters addressed in that familiar way.

24 Q. And are they letters which are intended for Wyckoff, Seamans & Benedict? A. Yes, sir.

25 Q. For how long a period of time, to your knowledge, have letters or communications been addressed to Wyckoff, Seamans & Benedict in this city under the name or designation "Remington Typewriter Company," or "Remington Company," or "Remington Typewriter"? A. Since I became connected with the business, July, 1883.

26 Q. Do you mean ever since you became connected with the business? A. I do.

881 The letters purporting to have been written by Mr. C. Hansen to the Remington Typewriter Company, dated November 15, 1898, November 18, 1898, December 12, 1898, and December 22, 1898, and the envelope pinned to the letter of December 22, 1898, are offered in evidence and marked Complainant's Exhibits "Hansen Letters 1, 2, 3 and 4, and 5."

Complainant's counsel also offers in evidence a letter purporting to have been written to Mr. C. H. Hansen, of Waukegan, Illinois, by the Remington-Sholes Company, dated December 15, 1898, and the same is offered in evidence and marked Complainant's Exhibit "Hansen Remington-Sholes Letter December 15, 1898."

882 Defendant's counsel admits that said letter was written to said Hansen by the Remington-Sholes Company at the date mentioned in said letter, to wit, December 15, 1898.

27 Q. I now show you what purport to be several envelopes, and one letter, addressed to the Remington Typewriter Company of Chicago, Illinois, and ask you whether or not you have ever seen the same before, and to state what you know concerning the same?

**Papers handed to witness.**

A. I have. I received the envelope containing 883
the letter signed S. V. Potter at Decorah, Iowa, October 18th, to the Remington T. W. Company, Chicago. The envelope bears the address, "Remington Type W. Co., Chicago," and an endorsement written across the face of the envelope, "Wyckoff, Seamans & Benedict, opened by R. S. Co." I received from the letter carrier of the City of Chicago enclosed in envelope bearing the printed card "The Remington-Sholes Company, Chicago, Illinois," addressed to Wyckoff, Seamans & Benedict, 146 Monroe street, City. A letter addressed Wyckoff, Seamans & Benedict, City, dated August 26th, signed Remington-Sholes Company, F. V. Paulsen, referring to the letter also attached on a printed letter- 884
head of the Business University, Wallace J. Dillingham, Principal, Warsaw, Indiana, dated August 24th, addressed "Remington Typewriter Company, Chicago, Illinois," reading as follows: "I sent you an order for a machine (rental) nearly a week ago. Why have I not heard from you?" Signed, "Wallace J. Dillingham." I received from the letter carrier, Chicago, envelope containing a letter postmarked at Keokuk, Iowa, November 6th, 1897, addressed Remington Typewriter Company, Chicago, Illinois, endorsed in copyable pencil across its face, "opened by mistake R. S. Co." below "Remington-Sholes Company," printed with rubber stamp, "F. V. Paulsen, Treasurer." Also written with a pen- 885
cil, "Wyckoff, Seamans & Benedict, Madison street." I also received from the letter carrier, Chicago, envelope bearing the printed card of Commonwealth Iron Company, Commonwealth, Wisconsin, addressed Remington Typewriter Agency, Chicago, Illinois, endorsed across its face with copyable pencil, "Opened by mistake, Remington-Sholes Company," and below written in the same way, "Wyckoff, Seamans & Benedict." I also received from the letter carrier, Chicago, envelope bearing the printed card, "The Remington-Sholes Company, Chicago, Illinois" post-marked Chicago, Illinois, Octo-

886 ber 21st, 1 P. M., 1898, addressed "Remington Standard T. W. Co., Madison street, City." I also received from the letter carrier, Chicago, a letter I have in my hands, dated Ottumwa, Iowa, 5-3-1899, signed H. W. Barnes, addressed "The Remington Standard Co., Chicago, Illinois," reading in the first paragraph as follows: "I wrote you some days ago in reference to some copyholders, but the Rem-Sho people got the letter by mistake, and I failed to get much satisfaction out of their reply." I also received in due course of mail by hand of the letter carrier, Chicago, the letter I hold in my hand, dated November 17, 1897, signed Charles Hugh Gordon, Postmaster.

28 Q. Do you know whether there is a place in
887 Iowa by the name of Decorah? A. Yes, sir.

29 Q. Do you know whether there is a place in the same State by the name of Calmar? A. Yes, sir.

30 Q. Do you know the writer of the letter dated Decorah, Iowa, October 18, 1898? A. I know him by correspondence; I have not met him personally.

31 Q. Did you have correspondence with such person prior to or subsequent to October 18, 1898, and did you receive letters from him through the mails? A. Yes, sir.

32 Q. Is this letter, dated Decorah, Iowa, October 18, 1898, now in the same condition as it was when it came to your hands through the mails? A. Yes,
888 sir.

33 Q. Is the envelope, in which that letter was contained, now in the same condition as it was when received by Wyckoff, Seamans & Benedict of this city through the mail? A. Yes, sir; except for being opened at the edges to remove the contents.

34 Q. State what, if anything, you know as regards the handwriting on the envelope addressed to Wyckoff, Seamans & Benedict, opened by "R. S. Co." A. I recognize it as the same handwriting endorsing our address on other envelopes opened by "R. S. Co." and "Remington-Sholes Company," and on envelope bearing the printed card of the Rem-

ington-Sholes Company addressed "Remington Standard T. W. Co." 889

The letter of S. V. Potter, dated Decorah, Iowa, October 18, 1898, addressed to the Remington T. W. Co., Chicago, Illinois, and the envelope addressed to Remington Type W. Co., Chicago, opened by R. S. Co., in which said letter was contained are filed in evidence, and marked Complainant's Exhibit "Potter letter and envelope, October 18, 1898."

35 Q. Are you acquainted with Wallace J. Dillingham, whose name is subscribed to the letter of August 24, 1898? A. I am acquainted with him by correspondence, and my recollection is that I met him personally at Grand Rapids, Michigan. 890

36 Q. Do you know whether or not Wallace J. Dillingham was conducting a business university at Warsaw, Indiana, on or about August 24, 1898? A. I know it, by common report, and by the business relations existing between us and our Indianapolis branch with reference to Professor Dillingham.

37 Q. Have you ever addressed letters to or received letters from Wallace J. Dillingham? A. Yes, sir.

38 Q. And have you had correspondence with him to such an extent as enables you to say whether or not the letter of August 24, 1898, is in Wallace J. Dillingham's handwriting? A. I have no doubt whatever but that it is his handwriting. 891

39 Q. Is the letter purporting to have been written by Wallace J. Dillingham, dated August 24, 1898, the envelope bearing the name of the Remington-Sholes Company and the letter bearing same name, dated August 26, 1898, now in the same condition that they were when they came into your hands through the mail?

Handing paper to witness.

A. Yes, sir; except for two words and a date, and initials "S. W. C." in pencil in the lower left-hand

892 corner of the Dillingham letter. This is an endorsement to the effect that our Indianapolis house was advised August 27, 1898, of the correspondence of Dillingham and the Remington-Sholes Company.

The letter purporting to have been written by Wallace J. Dillingham, dated August 24, 1898, and the letter purporting to have been written by the Remington-Sholes Company bearing date August 26, 1898, and the envelope in which said correspondence was contained bearing the name "The Remington-Sholes Company" are filed in evidence, and marked Complainant's Exhibit "Dillingham Remington-Sholes letters and envelope."

893 Defendant's counsel admits that the letter purporting to have been written by the Remington-Sholes Company, August 26, 1898, and the envelope attached thereto, were written by and sent by the Remington-Sholes Company at the time they bear date.

40 Q. Do you know whether or not there is a concern located at Commonwealth, Florence County, Wisconsin, known as the Commonwealth Iron Company? A. I do by correspondence and by reference to Mercantile Agency reports.

41 Q. Have you or not had correspondence with the Commonwealth Iron Company, and written to
894 said company and received letters from said company through the mails? A. Yes, sir.

42 Q. I call your attention to the words "Wyckoff, Seamans & Benedict," and "Opened by mistake Remington-Sholes Co.," and ask you to say, if you know in whose handwriting these words are? A. I do not know in whose handwriting, but I recognize the handwriting as of the same writer who endorsed other envelopes received in similar condition by letter carrier, and which have been in my hands today.

Recess taken until 2 P. M.

SILAS W. CRANDALL, recalled, further testified as 895
follows:

DIRECT-EXAMINATION resumed by Mr. Donnelly:

43 Q. In your last answer, referring to the envelope bearing the name Commonwealth Iron Company, you say: "I recognize the handwriting as of the same writer who endorsed other envelopes received in similar condition by letter carrier, and which have been in my hands to-day." I ask you to refer to and examine the envelope bearing the name Commonwealth Iron Company, on which is written the name "Wyckoff, Seamans & Benedict. Opened by mistake. Remington-Sholes Company," and compare the same with the envelope bearing 896
the name Wyckoff, Seamans & Benedict, and containing the Potter letter, and say whether they are the same handwriting or different handwriting? A. They are unquestionably written by the same person.

The envelope which has been shown the witness and identified by him bearing the name "Commonwealth Iron Co.," is offered in evidence and marked Complainant's Exhibit "Commonwealth Iron Co. envelope."

44 Q. I call your attention to an envelope, postmarked Keokuk, Iowa, November 6th, addressed to Remington Typewriter Co., Chicago, Illinois, bear- 897
ing the name "Remington-Sholes Company, by F. V. Paulsen," and ask you to state if you know from whom that envelope emanated, that is to say, by whom it was addressed "Remington Typewriter Company"? A. I have an original memorandum that was pinned to this that would indicate. I cannot recollect the name.

44½ Q. By whom was this envelope delivered to Wyckoff, Seamans & Benedict? A. By the Chicago post office letter carrier.

45 Q. What does the stamp "Remington-Sholes Company, by F. V. Pulsen," indicate? A. That it

898 was opened by mistake by the "R. S. Co.," which is the Remington-Sholes Company.

46 Q. Do you recognize on said envelope the signature of F. V. Paulsen? A. I recognize the same handwriting and the same signature that appear on other documents that have come before my attention, especially letters written by the Remington-Sholes Company and signed by the same individual.

The envelope post-marked Keokuk, November 6, 1897, addressed to Remington Typewriter Company, Chicago, Illinois, is offered in evidence and marked Complainant's Exhibit "Keokuk envelope."

899 47 Q. I call your attention to an envelope bearing the name Remington-Sholes Co., addressed to the "Remington Standard T. W. Co., Madison Street, City," post-marked Chicago, October 21, 1898, and ask you to examine the same and state whether or not you find the name Remington Standard T. W. Co., to be in the same or different handwriting from that endorsed upon other envelopes which you have examined, (Witness examines paper). A. I am of the opinion that the writer of this envelope, bearing the address of the Remington Sholes Company, is the same as on the other envelopes, notwithstanding the fact that he used a forward movement instead of a back hand
900 writing as in the other cases.

The envelope shown the witness bearing the name "The Remington-Sholes Co.," post-marked Chicago, October 21, 1898, offered in evidence and marked Complainant's Exhibit "Remington-Sholes Company envelope, October 21, 1898."

48 Q. I show you a letter now, purporting to have been written and signed by one H. W. Barnes, dated Ottumwa, Iowa, May 3, 1899, addressed to the Remington Standard Company, Chicago, Illinois, and ask you to state whether or not you know a

person by the name of H. W. Barnes residing at Ottumwa, Iowa? A. Yes, sir. 901

49 Q. Please examine said letter, and state whether or not you are familiar with Mr. Barnes' handwriting, and whether said letter is in his genuine handwriting? A. From my knowledge of his handwriting in correspondence, I believe that to be his genuine handwriting.

50 Q. Have you ever had any dealings with Mr. Barnes, and if so, when and to what extent? A. I would not be able to say to what extent he has purchased merchandise of us, but I do know that he is a customer on our books.

51 Q. Do you know whether or not Mr. H. W. Barnes of Ottumwa, Iowa, was a customer of Wyckoff, Seamans & Benedict prior to May 3d, 1899? A. I could not testify absolutely that he had been sold goods by us prior to that time, but my recollection is that such is the case. 902

52 Q. Do you know whether or not Mr. Barnes had prior to May 3d, 1899, addressed any communication to Wyckoff, Seamans & Benedict as regards copyholders, and if so, state briefly what you know about it? A. We did not receive any letter from him prior to the one dated May 3d, but in that letter he calls our attention to the fact that he had addressed us a few days previously in reference to copyholders, but that the "Rem-Sho" people got the letter by mistake and he failed to get much satisfaction from them in reply. 903

Counsel for defendants objects to and moves to strike out the witness' answer for the reason that it is not responsive to the question and for the further reason that there is no evidence showing that prior to May 3d, 1899, there had been a letter addressed by H. W. Barnes to Wyckoff, Seamans & Benedict or to the "Remington Standard Co.," and for the further reason also, that the answer is incompetent.

904 53 Q. Is it or not a fact that Wyckoff, Seamans & Benedict manufacture and sell copyholders, and if so, please explain to the Court briefly what copy holders are? A. They do. Copyholders are portable stands in many different forms, for the convenience of operators to hold copy from which to transcribe or copy notes.

The letter which has been shown to the witness purporting to have been written by H. W. Barnes is offered in evidence, and marked Complainant's Exhibit "Barnes letter."

54 Q. Do you know of any other instances where letters which were intended for Wyckoff, Seamans
905 & Benedict were delivered by mistake, or inadvertence, to the Remington-Sholes Company. I mean, other than those which have been produced and put in evidence after having been identified by you? A. There have been many such instances. The letters having been delivered by the letter carrier to the Remington-Sholes Typewriter Company have been brought to us after being opened by the Remington-Sholes Company, and we have placed the matter in the envelopes in the hands of the postmaster of Chicago in order that the letter carriers might be called to account. The instances of where such envelopes have been placed in the hands of the post office, and where the envelopes were not returned to
906 us by the post office, were more in number according to my best recollection than the number of envelopes referred to in the questions that have been asked me in the examination to-day.

55 Q. Do you know of any instances where letters or correspondence intended for the Remington-Sholes Company have been delivered by mistake or inadvertence to the concern which you represent? A. There have been such instances.

56 Q. Do you now recall any other facts, which you have stated, showing or tending to show confusion in business as between the concern which you represent and the Remington Sholes Company, if

so, please state what you know on that subject? A. 907
I recall cases where a concern being solicited by our house has informed us that they have received a call from our representative at a recent prior date, which fact being unknown to us caused us to make inquiries, and it developed the fact that the representative they referred to was not in our employ, but on referring to the business card left by him was a salesman of the Remington-Sholes Company, or representing the "Rem-Sho" machine. There have been cases also of where callers at our store have interrogated us respecting some improvement in our machine as it was understood by the customer, or at least some change which did not show on the different models we exhibit, and then in the course 908
of the conversation we would learn that the customer had obtained the impression that we were manufacturing a different model than that exhibited, and which he finally described as the "Rem-Sho." I think that is all.

57 Q. If you recall any other cases, showing or tending to show confusion between the business which you represent in Chicago and that of the Remington-Sholes Company, please mention such instances? A. We have been called up by the telephone company and conversation opened with us by some business house referring to some business matter, and it would be noted by us before we had gotten very far along in the conversation that they 909
had intended to call up the Remington-Sholes Company.

58 Q. Do you now recall any instance or instances, other than those referred to by you in your testimony, in which persons were under the impression, or rested in the belief that the "Remington-Sholes" typewriter, or "Rem-Sho" typewriter, was a product of the concern that you represent? A. I recall an instance of an official calling at our store representing a title and trust company, who had been talked to by some typewriter salesman, who had discussed with him the

910 merits and demerits of the "Rem-Sho" machine, and he seemed to have no other idea than that he would learn more of the machine by talking with us, and who, he seemed to think, were the manufacturers and dealers of the machine.

Defendants' counsel objects to it and moves to strike out the foregoing answer as manifestly improper and incompetent.

59 Q. Did the said official referred to in your last answer call at your place of business or make inquiry concerning the said "Rem-Sho" typewriter as referred to in your last answer? A. Yes, sir; that was at least one of the reasons why he came.

911 CROSS-EXAMINATION by Mr. Fisher:

60 x Q. In your answer to direct-question 9, you state upon the window of the place of business of Wyckoff, Seamans & Benedict, in Chicago, there appear the words "The Remington Typewriter," and that the same sign lettering has been employed without change since May, 1892. Kindly state what else, if anything, appears upon the front window of the store of Wyckoff, Seamans & Benedict in this city, in conjunction with the words "The Remington Typewriter." A. The usual trade-mark or seal, so-called.

61 x-Q. Do you mean the red seal having printed
912 thereon a representation of a typewriting machine with the words "Standard Remington Typewriter," and the words "Trade-Mark"? A. I can't be sure that all of this reading matter is on that seal, as it was necessary for the artist to consult the artistic effect. The word "Remington" does appear under the cut of the machine, but I wouldn't be positive without going and examining the cut on the window that it contains any other words whatever.

62 x-Q. About how large is the red seal that is displayed upon the window of the store front of Wyckoff, Seamans & Benedict, of this city? A. About 20 inches in diameter.

63 x-Q. Is it the same red seal that is used upon 913
the Remington Standard machines and upon other merchandise sold by Wyckoff, Seamans & Benedict? A. It is, excepting so far as the artist may have eliminated words to bring out the black and red prominently.

64 x-Q. How long has that seal been displayed upon the window of your store front? A. On our present store, two years and one month; on the store we occupied at 169 La Salle, two years; on the store we occupied at 175 Monroe, the balance of the time back to May, 1892.

65 x-Q. So that since May, 1892, it has been the invariable rule to employ the red seal in connection with the words "The Remington Typewriter"? A. 914
In respect to furnishing the sign on the front window, yes.

66 x-Q. But you do recall whether or not during this time any words appeared upon the red seal other than the word "Remington"? A. We employed the same artist for the three windows, Zero Marx, and, on the first occasion, he was talked to in regard to the artistic effect, and I recall some discussion in regard to the wording.

(At the request of counsel for defendants witness visited the store of Wyckoff, Seamans & Benedict on Madison street and returning resumed his answer.) The seal has inside of the teeth above the upper half the following words 915
"To save time is to lengthen life." In the centre the cut of the typewriter and above the typewriter the word "Standard." At the left of the typewriter the word "Trade," and at the right "Mark," and below the typewriter the two words "Remington Typewriter."

67 x-Q. The red seal therefore and the words and illustration thereon are the same as appear upon the typewriting machines, the merchandise and the stationery of Wyckoff, Seamans & Benedict? A. Yes, sir.

916 68 x-Q. When did you first see a Remington-Sholes typewriter displayed for sale here in Chicago? A. About four years ago.

69 x-Q. At what place? A. My best recollection is it was in the store occupied by the Remington-Sholes people on Monroe street. I am a little in doubt whether it was in the Ft. Dearborn Building or the New York Life Building.

70 x-Q. Do you recall what words appeared upon the sign of the store in which the Remington-Sholes machines were offered for sale at that time? A. I am afraid my recollection isn't much better than the wording on our seal. I think the name "Remington-Sholes Company" was on a window. I don't
917 recall this minute what other wording there was. I haven't given it any thought.

71 x-Q. Do you recall having seen upon the window of the store in which the Remington-Sholes machines were sold the words "Not the Remington Standard Typewriter" or words to that effect? A. I recall a statement of that sort. I wouldn't be willing to testify that I had seen it on the window, but the expression is familiar to me as one used by the Remington-Sholes people either in circular matter or as a sign.

72 x-Q. What is your best recollection in this regard with respect to the sign on the store window of the Remington-Sholes Company? A. My im-
918 pression is that I saw such an expression on the window, but don't feel absolutely certain of my recollection.

73 x-Q. Do you recall how long since it was that you saw such statement upon the circulars or advertising matter of the Remington-Sholes Typewriter Company? A. I have examined no circular, beyond noting cuts of machines published by the Remington-Sholes Company, for a matter of a couple of years at least. I don't recall seeing the expression referred to for probably three years, perhaps four. It is quite indistinct in my recollection.

74 x-Q. In your direct-examination you have

stated, I think, that in some instances parties have called up your office from the telephone and you have discovered that such parties really wished to talk with the Remington-Sholes Company. I call your attention to the telephone directory of the Chicago Telephone Company and ask you to state if it is not a fact, as shown by such directory, that Wyckoff, Seamans & Benedict has its number appearing therein in juxtaposition to the number and name of the Remington-Sholes Company in the following manner: 919

"North 572 Remington Sholes Typewriter, Factory—127 Rees.

Main 3036 Remington-Sholes Co., City Salesroom—204, 126 State. 920

Main 137 Remington Standard Typewriter—Wyckoff, Seamans & Benedict—144 Madison"?

A. Yes, sir; I appreciate the fact, which you state, that it is a correct transcript.

75 x-Q. In your answer to direct question 54 you have stated that you know of many instances where letters which were intended for Wyckoff, Seamans & Benedict were delivered by mistake or inadvertence to the Remington-Sholes Company. Can you state approximately how many such instances there were, and how long it has been your habit to preserve the envelopes in which such letters were received? A. There may have been, probably were, upwards of a dozen such cases in the last four years. We have attempted to save the envelopes only in the last two years. 921

76 x-Q. In your answer to direct-question 75, you state that "you recall cases where a concern being solicited by our house have informed us that they have received a call from our representative at a recent prior date, which fact being unknown to us caused us to make inquiries, and it developed the fact that the representative they referred to was not in our employ, but who, on referring to the business card left by him, was a salesman of the Remington-

922 Sholes Company, or representing the Rem-Sho machine." Can you give the name of the business house referred to in this answer to direct-question 56? A. I cannot. Those cases would arise in the ordinary transaction of business; no memorandum has been made by me, no attempt has been made to recollect the names of houses. Nothing has been said by me regarding that fact to anybody. I simply retain it as a recollection of a condition.

77 x-Q. Have you any recollection of more than one of such cases occurring, or did you have in mind a single case in your answer to direct-question 56? A. I referred to several cases of similar nature. If there were only one I would be apt to recall more of
923 the particulars.

78 x-Q. But do you not recall the names of the parties concerned in any of such cases? A. I do not.

79 x-Q. Can you recall any facts that will enable me to identify such cases, or can you state when such cases occurred? A. Those cases occurred for the greater part three and four years ago when the Remington-Sholes Company were more active than at the present time in the City of Chicago, employed a large selling force, and then we experienced competition from them. No case has arisen of any moment in the last two years. There has been but little competition from them in the City of Chicago.

924 80 x-Q. In your answer to direct-question 56, when referring to cases cited by you as tending to show confusion in business between Wyckoff, Seamans & Benedict and the Remington-Sholes Company, you refer to business cards having been left by a salesman of the Remington-Sholes Company with the persons involved in such cases of supposed confusion. Will you state whether or not you saw any of such business cards? A. I think I have seen one business card, perhaps more, left under such circumstances, but they might be lost in some cases. I do not wish to be understood that in every case I investigated, a

business card would be discovered by the person in- 925
quiring of us.

81 x-Q. Do you remember what appeared upon those business cards? A. I have a distinct recollection of a cut of a typewriter, somewhat resembling our own, and about it, or under it, or across the face of the card at first the name "Remington-Sholes," and afterwards "Rem-Sho." The name of Mr. Fay and Mr. Remington on the upper portion of the card. I think the factory address was all there was on it, Rees street, Chicago.

82 x-Q. I call your attention to the business card, which is the same card referred to in the cross-examination of the witness Albert D. Brown and identified by the letters "H. D. D." and the date 926
"June 14th, 1899" on the back thereof, and ask you to state how this card compares with the cards referred to in your last answer? A. This card is familiar to me as one I have seen somewhat frequently in the last year or two, but I am unable to say that it is the same card as we saw prior to a couple of years ago. My strongest impression is the cut of the machine and its designation "Rem-Sho" are the same. The secondary features I am not so clear in my recollection of, but am not impressed that there is any difference.

86 x-Q. In your answer to direct-question 58, you refer to an instance of an official calling at your store and representing a title and trust company, 927
who had been talked to by some typewriter salesman in regard to the Rem-Sho machine. Will you state who such official was and when he called at your store? A. I am unable to give the name of the official. He called at least a year and a half ago.

84 x-Q. Where was your store located at that time? A. At 144 Madison street. I doubt if he gave his name. Talked about his business only.

85 x-Q. Did you talk with that official personally? A. Yes, sir; to some extent.

86 x-Q. But did not ask him his name? A. I couldn't say at this time what the exact conversa-

928 tion was with respect to his name, if there was any conversation on that point.

87 x-Q. In your answsr to direct-question 14, when testifying in regard to the character of the inquirer's name concerning the origin of the so-called "Rem-Sho" typewriter, you state that "there was without exception in the case of such inquiries referred to a confusion on the part of the inquirer as to the manufacture, and in some instances even of the sale of the so-called "Remington-Sholes" or "Rem-Sho" as distinct from the "Remington typewriter." Now, I ask you to give me all the facts, names of persons, dates, &c., of a single instance within your own experience
929 in which the use of the name "Rem-Sho" in connection with defendant's machine has been the cause of any confusion as to the source or origin of said machine? In answering this question you will please give me all data within your recollection that will enable me to identify the parties concerned. A. In view of the fact that no case has come under my personal observation for a year and a half; in view of the fact that these cases as a whole transpired three and four years ago, that no memorandum of persons, dates or the events was made, that no reference to any memorandum or statement or correspondence has been made, or any thought given to the subject whatever, I do not retain in my recollection the
930 names of any parties, any dates or other data bearing upon this question; but in making the answer I did as to the confusion of the public on the subject of manufacture of the so called "Rem Sho" machine, I had in mind what was a common report, common rumor and talk between different members of my organization and myself, ourselves and our customers.

REDIRECT-EXAMINATION by Mr. Donnelly:

88 RD Q. Your attention has been directed by the defendants' counsel to the telephone directory of the

City of Chicago, published by the Chicago Telephone Company, to a list of names in said directory. Do you desire to make any explanation or further statement as regards your answer to said cross-question, and if so, please make it? A. While it is true that a person knowing the name of the concern they desire to communicate with by telephone would refer to the general alphabetical list of names quoted by counsel for the defendant, yet if the nature of the business was prominent in the mind, and the name or title of the concern was less distinct, they would refer to the index of business, and under the head of "Typewriters" it would be easy to call up "Remington Typewriter, 137 Main," without recollecting the fact that another name was hyphenated with Remington, there being in this column the following under the head of "Typewriters": 931 932

"Main 3036 Remington-Sholes Company, City Sales Office 204, 126 State.

North 572, Main 3036. } Remington-Sholes Company, C. N. Fay, Pres., Franklin H. Head, V. Pres., F. Remington, Gen Mgr., J. V. Paulsen, Sec. & Treas. Factory 127 Rees, City Sales Office 204, 126 State.

Main 137 Remington Typewriter, 144 Madison."

The name Remington-Sholes Company opposite North 572, Main 3036, is in large print type. The last item of "Main 137 Remington Typewriter, 144 Madison," is the business of Wyckoff, Seamans & Benedict. 933

(Signed) SILAS W. CRANDALL.

Subscribed and sworn to before me this 14th day of June, A. D. 1899.

LYNDEN EVANS,

[NOTARY'S SEAL.] Notary Public,

Adjourned until Thursday, June 15, 1899, 10 A. M.

934

CHICAGO, June 15, 1899.

Parties met pursuant to adjournment.

Present—Counsel same as before.

EUGENE A. CONYNE, a witness called on behalf of the complainant, of lawful age, being first duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation. A. My name is Eugene A. Conyne; reside at
935 Austin, Illinois; salesman for Wyckoff, Seamans & Benedict in the City of Chicago; am 33 years of age.

2 Q. How long have you been in the service of Wyckoff, Seamans & Benedict as a salesman in the City of Chicago? A. Since September, 1892, up to the present date.

3 Q. State generally what your duties as salesman for Wyckoff, Seamans & Benedict have been during the time that you have been in the service of that concern? A. Well, my services are practically and entirely occupied in selling goods, and looking after the interest in the sales department.

4 Q. What goods do you sell? A. I sell the type-
936 writer, typewriter covers, cabinets, stands and desks.

5 Q. In your occupation as salesman of the typewriting machines of Wyckoff, Seamans & Benedict, do you or not, come in contact with purchasers and users of typewriting machines? A. I do.

6 Q. Do you or not know by what name the type writing machines manufactured and sold by Wyckoff, Seamans & Benedict are generally known in the trade and among purchasers and users of typewriting machines? A. I do.

7 Q. Please state by what name the typewriting machines manufactured and sold by Wyckoff, Sea-

mans & Benedict are known in the trade and among 937
purchasers and users of typewriting machines in the City of Chicago? A. They are known as the Remington Standard Typewriter.

8 Q. Are they ever known by any other name? any shorter designation? A. Nothing, except it might be abbreviated as the "Remington."

9 Q. Well, is it in fact abbreviated and called the "Remington Typewriter"? A. It is known by almost everybody as "The Remington Typewriter."

10 Q. Have you ever seen or examined a typewriting maching that is called the Remington-Sholes or the "Rem-Sho" typewriter? A. Yes, sir.

11 Q. About how long have you been acquainted with that machine? A. About five years. 938

12 Q. In the course of your canvassing as a salesman for Wyckoff, Seamans & Benedict, have you ever come in contact with persons who were under any misapprehension or in any doubt as to the origin of the so-called Remington-Sholes Typewriter, or "Rem-Sho" typewriter, or as to who the makers of that machine were?

Question objected to as immaterial, irrelevant and incompetent.

A. Yes, sir.

13 Q. Please state from your knowledge and experience what impression or idea you have found in the minds of persons or the public as to the origin 939
of the so-called "Remington-Sholes Typewriter," or "Rem-Sho" Typewriter, and as to the makers or producers thereof?

Same objection as to the last question. The question is also objected to as calling for a conclusion of the witness, and as not being the best evidence with respect to the facts sought to be proven.

A. I have found, on a number of occasions, that the prospective customer has been under the impression that the Remington-Sholes, or "Rem-Sho"

940 typewriter was either manufactured or in some way connected with our company.

14 Q. To whom do you refer as "our company" in your last answer? A. I refer to Wyckoff, Seamans & Benedict.

15 Q. If you now recall any instances—I mean special instances, where persons laboring under such belief as to the origin of the so called "Rem-Sho" typewriter—you may mention them.

Same objection as to question 13.

A. Some time since I called on the Hartford Rubber Works of this city, soliciting their business, and they stated that they had recently had one of our
941 machines on trial, and had decided not to purchase it. Upon going to the office of Wyckoff, Seamans & Benedict, I made inquiry as to whether they had placed any machine on trial with the Hartford Rubber Works, and upon looking up the matter they could find no record whatever of having done so. I returned to the office of the Hartford Rubber Works and asked them again. The person to whom I spoke referred the matter to the operator, who informed him that it was not a "Remington typewriter" that they had on trial, but a "Remington-Sholes" or "Rem-Sho" typewriter, which seemed to be news to him. Three or four days ago I called on the *Daily Justice Record* and after some
942 conversation with Mr. Peyton in regard to the purchase of a machine, he asked me if there was any connection between the Remington typewriter and the Remington-Sholes or "Rem-Sho" typewriter, and there seemed to be considerable doubt in his mind at the time. I cannot call to mind any other specific case at present.

16 Q. Are you able now to say whether or not there have been other special cases or instances than those you have mentioned within your own knowledge and experience? A. There have been a number of others of which I have not made any especial note.

CROSS-EXAMINATION by Mr. Fisher: 943

17 x-Q. When did you call on the Hartford Rubber Works as mentioned in your answer to direct-question 15? A. I cannot give the exact date. I think in the neighborhood of six months ago.

18 x-Q. Can you give the name of the person with whom you had your conversation at the office of the Hartford Rubber Works? A. I did not learn it.

19 x-Q. Did you learn the position occupied by such person in the Hartford Rubber Works? A. I did not.

20 x-Q. Can you give me such description of the person with whom you talked at the Hartford Rubber Works as would enable me to identify such person? 944 A. I believe so.

21 x-Q. Please do so? A. He was a young man, evidently about thirty years of age, of medium stature, light build, light complexion and smooth face. He appeared to be in the firm.

22 x-Q. Do you recall what position in the office his desk was located? A. At each time I called he was standing in the office with one or two persons about him. I never saw him at his desk.

23 x-Q. Can you give me the initials of the Mr. Peyton with whom you say you talked at the office of the *Daily Justice Record?* A. I cannot.

24 x-Q. Did Mr. Peyton show you any advertising material of the Remington-Sholes Company? A. He did not. 945

(Signed) EUGENE A. CONYNE.

Subscribed and sworn to before me this 15th day of June, A. D. 1899.

LYNDEN EVANS,
[NOTARY'S SEAL.] Notary Public.

946 DONALD MCKAY, a witness called on behalf of the complainant, of lawful age, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation. A. Donald McKay; age, 57; salesman; residence, Chicago.

2 Q. In whose service are you engaged as a salesman? A. In Wyckoff, Seamans & Benedict.

3 Q. How long have you been in the service of Wyckoff, Seamans & Benedict as a salesman? A. Ten years.

4 Q. Where have your duties as salesman been
947 performed? A. In the city of Chicago.

5 Q. What are the character of your duties as salesman, and what have they been in the past ten years that you have been in the service of Wyckoff, Seamans & Benedict? A. Selling typewriter machines, typewriter furniture in Chicago.

6 Q. In selling typewriter machines and other goods for Wyckoff, Seamans & Benedict in the City of Chicago, have you or not come in contact with purchasers and users of typewriting machines? A. Yes.

7 Q. In the course of your occupation as salesman selling the machines manufactured by Wyckoff, Seamans & Benedict, have you come to know by
948 what name their machines are known in the trade and among purchasers and users of typewriters? A. I have.

8 Q. Please state by what name the machines manufactured and sold by Wyckoff, Seamans & Benedict are generally known and designated in the trade and by purchasers and users of typewriting machines? A. The Remington typewriter.

9 Q. Do you know and have you seen or examined a typewriting machine known as the Remington-Sholes, or "Rem-Sho" typewriter? A. I have.

10 Q. About how long have you been familiar

with the so-called Remington-Sholes, or "Rem-Sho" typewriter? A. About five years. 949

11 Q. During your experience as a salesman for Wyckoff, Seamans & Benedict, have you ever discovered, or has it come to your knowledge that there was confusion in the minds of the public as to the origin of the Remington Sholes typewriter, or "Rem-Sho" typewriter, and as to who were the makers thereof?

Question objected to as immaterial, irrelevant and incompetent, as calling for a conclusion of the witness and as not the best evidence as to the facts sought to be proven.

A. I have. 950

12 Q. Please state any facts which have come to your knowledge showing or tending to show, that there has been or is confusion in the mind of the public as to the origin of the so-called Remington-Sholes typewriter or "Rem-Sho" typewriter, or as to the makers thereof.

Same objection as to the last question.

A. In the course of my experience selling Remington typewriters, I can remember of some instances where that has been the case. I cannot give the data nor can I state where this has occurred, as I do not remember it now.

13 Q. Please state whether or not during the course of your business in selling the Remington machine you have ever come in contact with any persons who were under the impression or rested in the belief that the so-called Remington-Sholes typewriter was manufactured or sold by the concern that you represent? 951

Same objection as to the last question.

A. I can recall one instance where a lady wished to have a typewriting machine repaired and called at the office of the Remington-Sholes—at that time it was the Remington-Sholes, it wasn't the Rem-

952 Sho—who was under the impression that she was in the Remington office, and who had some trouble about the bill for repairs, the work being done on this machine by a Remington Sholes salesman. I had previously solicited the repairs on this machine and was called in later to give my opinion whether the price charged on said machine was not exorbitant, when she stated to me that she never would have had the work done by the Remington-Sholes had she known at the time that it was not the Remington Typewriter Company.

14 Q. If you recall any other instances where persons were under the belief or under the impression that the so-called Remington-Sholes typewriter
953 or Rem-Sho typewriter was put out by your concern, please state them?

Same objection as to the last question.

A. I can remember of several instances where there has been a confusion on account of the similarity of name, but I cannot state at present where this has been.

15 Q. Please explain a little more fully in what respect, if any, there was confusion in those instances as regards similarity of name?

Same objection as to the last question.

A. When the Remington-Sholes machine was
954 first put on the market it was known as the Remington-Sholes, hyphenated name, and during the time that it continued under that name there was constantly more or less misunderstanding with the buyers of typewriting machines, whether this machine was manufactured by the Remington Company or not.

16 Q. Prior to the marketing of the Remington-Sholes machine, which, according to your recollection, was about five years ago, had you ever known or heard of any other Remington typewriter than the one you have been engaged in selling the past ten years? A. I had not.

CROSS-EXAMINATION by Mr. Fisher: 955

17 x-Q. In your answer to direct-question 13, you mention an instance where a lady wished to have a typewriting machine repaired, and called at the office of the Remington-Sholes Company. State when this occurred, as near as you can recall, and state also how you know she made such call at the office of the Remington-Sholes Company? A. About four years ago this occurred. I had occasion to call on her soliciting her repairs for the machine, and she stated to me herself that she had sent the machine into the Remington-Sholes office while under the impression that it was the Remington typewriter office.

18 x-Q. Can you give me the name of the lady referred to in your answer to direct-question 13? A. I can. Her name is Mrs. Sternberg, an insurance solicitor, whose office is now, I think, at 145 LaSalle street, in the Roanoke Building. 956

19 x-Q. In your answer to question 15, you state that when the Remington-Sholes machine was first put on the market it was known as the Remington-Sholes, hyphenated name, and that during that time there was more or less misunderstanding whether the machine was manufactured by the Remington Company or not. Now, I ask you whether of your own personal experience you can give me any instance or instances in which any confusion has arisen since the name "Rem Sho" was adopted by the Remington-Sholes Company; and in answering this question I would thank you to state all data that you had in mind and which may enable me to identify such instances? A. I cannot give any particular data in reference to when or where such a confusion has occurred. My experience in selling the Remington typewriter has brought me into connection with people that were considering buying other machines than our own, and the change of name from "Remington-Sholes" to "Rem-Sho" still causes a misunderstanding, or a misconception 957

958 among the buyers of machines, as the name is only understood to be an abbreviation of Remington-Sholes, and there still seems to be considerable confusion in the public mind whether this machine, the "Rem-Sho," is not the same as the "Remington" machine.

Counsel for defendant moves to strike out all that part of the last answer after the first sentence, as not responsive to the question and as giving a mere conclusion of the witness.

20 x-Q. I ask you to state a single instance within the past two years in which, within your own knowledge, any such confusion has occurred,
959 and I ask you to give me sufficient data with respect thereto as will enable me to verify such statement? A. I can't remember any specific instance where that has occurred at present.

21 x-Q. When did the Remington-Sholes Company adopt the name "Rem-Sho" as you understand, or rather, when did you first become familiar with such name? A. I think the machine has been on the market under the name of "Rem-Sho" between two and three years.

(Signed) DONALD MCKAY.

Subscribed and sworn to before me this 15th day of June, A. D. 1899.

LYNDEN EVANS,

960 [NOTARY'S SEAL.] Notary Public.

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WILLIAM J. MCNALLY, a witness called on behalf of the complainant, of lawful age, being first duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. William J. McNally; residence, 137 East Thirty-seventh street, Chicago; occupation, city manager of the Remington Typewriting Company.

2 Q. About how long have you been engaged in

your present occuption as city manager of the so- 961
called Remington Typewriter Company? A. One year May 1st.

3 Q. What was your occupation prior to that time? A. City salesman.

4 Q. For whom? A. For the same company.

5 Q. And how long were you engaged in the occupation of city salesman of said company? A. About seven years.

6 Q. And where have your services been performed as salesman and city manager for said company? A. In Chicago.

7 Q. What have been your duties as salesman and city manager for said company in the City of Chicago during the period mentioned by you? A. 962
Salesman for Remington typewriter, and looking after the sales of the Remington typewriter in the City of Chicago.

8 Q. In the performance of your duties as salesman and a city manager for said company, have you frequently come into communication and in contact with purchasers and users of typewriting machines? A. Yes, sir.

9 Q. Do you know by what name, if any, the typewriting machines manufactured and sold by the concern in whose employ you have been and are, are known and designated in the trade and among purchasers and users of typewriting machines? A. Yes, sir. 963

10 Q. By what name, if any, are such machines generally known and designated in the trade and among purchasers and users of such typewriting machines? A. The Remington.

11 Q. How long to your knowledge have such machines been so known in the trade and among purchasers and users in the City of Chicago? A. As far as my experience in the business dates back, and even before that when I was connected with the supply business of John Underwood & Company. I never have heard the machine called anything but the "Remington."

964 12 Q. In giving your testimony you have referred to the fact that you are connected with the Rem ington Typewriter Company. Please state what concern you referred to by that name? A. Wyckoff, Seamans & Benedict.

13 Q. State whether or not it is a fact that the concern Wyckoff, Seamans & Benedict, is known under the name "Remington Typewriter Company," which you have given in your testimony? A. Well, I think almost nine-tenths of the people of the City of Chicago would term our company the "Remington Typewriter Company." Rarely hear the term Wyckoff, Seamans & Benedict used.

14 Q. Is it ever designated by the name of "Rem-
965 ington Typewriter"? A. Yes, sir.

15 Q. For how long a period of time to your knowledge has Wyckoff, Seamans & Benedict and its business in the City of Chicago been generally designated as the "Remington Typewriter Company"? A. As far back as I can remember anything of the typewriter business.

16 Q. And for how many years did you state that you so remember? A. Well, about ten or twelve years.

17 Q. Have you recently examined the city directory of the City of Chicago? A. Yes, sir.

18 Q. Under what name or names does the business of Wyckoff, Seamans & Benedict appear, if at
966 all, in said directory? A. It appears under the heading of "Remington Typewriter Company," also under the heading of "Wyckoff, Seamans & Benedict." There are two or three headings under "Typewriters," "Typewriter's Supplies" and "Typewriter Employment Bureau," and under all of these I think it will appear as "The Remington Typewriter Company."

19 Q. Will you please refer to the Chicago City directory and give the designations as they appear in said directory referring to the Remington Typewriter Company or the Remington-Sholes Company? A.

Well, there appears the following in the city 967
directory:

"REMINGTON SHOLES COMPANY, C. N. Fay, pres.; Franklin H. Head, v. pres.; F. Remington, gen. mngr.; J. V. Paulsen, sec. and treas.; typewriters; general offices and factory 127 Rees st., Tel. North, 572; Salesroom 48 Lake, Tel. Main-2097.

REMINGTON STANDARD TYPEWRITER, Wyckoff, Seamans & Benedict, 144 Madison.

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REMINGTON TYPEWRITER,
Manufactured and Sold by
WYCKOFF, SEAMANS & BENEDICT, 968
144 Madison Street."

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This letter appears as a business card where included between the drawn lines. Under the heading of typewriters, manufacturers and dealers appears the following:

"REMINGTON-SHOLES CO.
C. N. Fay, pres.; Franklin H. Head, v. pres.; F. Remington, gen. mngr.; J. V. Paulsen, sec. and treas.; gen. offices and factory, 127 Rees st.; tel. North-572; salesroom, 48 Lake; tel. Main-2097.

"REMINGTON TYPEWRITER, 144 Madison." 969

20 Q. State for how long a period of time, to your knowledge, the concern that you represent has been designated in the City Directory of the City of Chicago in the manner which appears in your last answer? A. Well, I only know of the past year of course, because I have never had occasion to look into the directory before that, but I judge it has always been known by that name and has always appeared in the directory under these headings. It is a matter that wouldn't come under my notice until I took charge of the city business.

970 21 Q. Do you know of a concern in the City of Chicago known as the Remington-Sholes Company? A. I do.

22 Q. About when did it come to your knowledge that there was such a concern in the City of Chicago? A. I should judge between four and five years ago that I first heard of them.

23 Q. Have you ever seen and examined and are you familiar with the typewriting machine called the Remington-Sholes Typewriter or the "Rem-Sho" typewriter, and if so, for how long a period of time have you had knowledge of such machine? A. I have examined the machine and have been familiar with it for the past four years.

971 24 Q. Prior to the time when the so-called Remington-Sholes Typewriter Company and the Rem-Sho Company came to your knowledge, or prior to the time that the Remington-Sholes typewriting machine, or Rem-Sho typewriter, came to your knowledge, had you ever known or learned of any concern engaged in the business of manufacturing or selling typewriting machines, that used the name "Remington" in connection with its business, or upon or in connection with its typewriting machine other than the concern with whom you are connected? A. No; I never heard of any machine using that name before except the concern with which I am connected.

972 25 Q. In the performance of your duties as salesman and city manager of the business of Wyckoff, Seamans & Benedict in the City of Chicago, has it ever come to your knowledge that there was any confusion in the mind of the public or of intending purchasers or users of typewriting machines as to the origin of the so-called Remington-Sholes Typewriter or Remo-Sho typewriter, or as to the makers thereof?

Question objected to as immaterial, irrelevant and incompetent, and as calling for a mere conclusion of the witness.

A. Yes, there has been considerable confusion, 973
owing to the similarity in names between the two concerns.

26 Q. What similarity of names do you refer to?

Same objection as to the last question.

A. The use of the word "Remington."

27 Q. If you now recall any facts or circumstances, showing or tending to show, confusion in the mind of the public as to the origin of the Remington-Sholes machine, or as to the makers thereof, or any facts or circumstances tending to show confusion in the mind of the public between the business of Wyckoff, Seamans & Benedict, and that of the Remington-Sholes Company in the City of Chicago, please 974
state the same?

Same objection as to the last question.

A. I don't recall any particular case. The matter has gone out of my mind because I didn't pay any particular attention to anything of this kind that would come up. I have frequently been asked by purchasers if the companies were not the same, or if the Remington typewriter did not manufacture this machine and sell it under another name. In fact I have had quite a number of cases where confusion arose on account of the similarity of the name "Remington," but I don't recall any particular 975
case.

28 Q. What machine do you refer to in your last answer as "this machine"?

Same objection as to last question.

A. I refer to the Remington-Sholes.

29 Q. Do you now recall any instances where people have called at the place of business of Wyckoff, Seamans & Benedict, in this city, under the impression or belief that it was the place where the

976 Remington-Sholes machine was sold, or the business of the Remington-Sholes Company transacted?

Same objection as to the last question. The question is also objected to as leading and improper, as the witness has repeatedly stated that he did not recall particular instances.

A. During the past year or fourteen months that I have been in the office as city manager, there have been quite a number of instances of persons calling in at our store mistaking our place for that of the Remington-Sholes; they have been expressmen, messenger boys and other people, who, of course I
977 didn't know what their business was, who would ask if our company and the Remington-Sholes were not the same institution. They would seem much surprised when they were informed otherwise and given directions for the office of the Remington-Sholes Company.

30 Q. Do you know as a fact, whether or not, the so-called "Rem-Sho" typewriting machine is also known as the Remington-Sholes typewriter at the present time? A. Yes, sir; I think I hear it called about as much one as the other. In fact I never think of it myself as anything else but the Remington-Sholes. I kind of got used to calling it that when it first came out, and when they changed the name I didn't
978 quite get out of the way of changing my term for it.

CROSS-EXAMINATION by Mr. Fisher:

31 x-Q. In you answer to direct-question 27 you stated that you do not recall any particular case tending to show confusion in the mind of the public as to the origin of the Remington-Sholes machine; but you state, also, that you have had quite a number of cases where a confusion arose on account of the similarity of the name "Remington," although you

do not recall any particular case. Will you state 979
how long ago it was that such case or cases occurred and give me, if possible, any information that will enable me to verify the same? A. Well, the time of the cases is from the time the machine was put on the market, that would be about between four and five years ago, up to about probably a year ago, when I left off being a salesman, going around in the city. They were all the time coming in the way of business, but I don't remember any specific case. I didn't make any mental or other note at the time. In fact I didn't pay any particular attention to it other than meeting it in the regular course of business.

(Signed) WILLIAM J. McNALLY. 980

Subscribed and sworn to before me }
this 15th day of June, A. D. 1899. }

LYNDEN EVANS,
[NOTARY'S SEAL.] Notary Public.

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STATE OF ILLINOIS, }
County of Cook, } ss.:

I, LYNDEN EVANS, a notary public in and for the County of Cook and State of Illinois, acting as Special Examiner by consent of parties, do hereby certify that the foregoing depositions of Charles H. 981
Cooke, William H. Harmon, John S. Bayes, Stephen H. Farnham, Albert D. Brown, Silas W. Crandall, Eugene A. Conyne, Donald McKay and William J. McNally, in the suit of Wyckoff, Seamans & Benedict *vs.* The Howe Scale Company of 1886, were taken before me at the office of Josiah McRoberts, 107 Dearborn street, Chicago, Illinois, on the 13th, 14th and 15th days of June, A. D. 1899, beginning 2.30 o'clock in the afternoon of said 13th day, pursuant to the stipulation hereto attached in the said cause; that the complainant was present by H. D.

982 Donnelly, Esq., and Josiah McRoberts, of counsel, and the defendant by George P. Fisher, Esq., representing Peirce & Fisher, their counsel, during the examination of said witnesses; that before deposing each of said witnesses was by me duly sworn to tell the truth, the whole truth and nothing but the truth in relation to the cause now pending in the United States Circuit Court for the District of Vermont, wherein Wyckoff, Seamans & Benedict is complainant and The Howe Scale Company of 1886 is defendant; that the depositions of said witnesses were taken down from their statements by a skilled typewriter operator under my directions and by consent of parties, and were duly subscribed and sworn
983 to by the said witnesses as their depositions in said cause, as therein appears.

And I do further certify that I am neither attorney nor of counsel for either party, and am not interested in the event of said cause either pecuniarily or otherwise.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 16th day of June, A. D. 1899.

(Signed) LYNDEN EVANS,
[NOTARY'S SEAL.] Notary Public,
Acting as Special Examiner.

Notary's fee, $5, paid by complainant.

984 LYNDEN EVANS,
Notary Public

UNITED STATES CIRCUIT COURT, 985

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT,
Complainant,

vs.

HOWE SCALE COMPANY OF 1886,
Respondent. 986

ST. LOUIS, Mo., June 16, 1899.

TESTIMONY taken on behalf of the complainant before William L. Rodgers, a notary public, in and for the City of St. Louis and State of Missouri, under and pursuant to stipulation in this cause and Special Examiner by consent, under the 67th rule in equity, as amended.

OSCAR W. KOCHTITZKY, of lawful age, being duly sworn, upon his oath, deposes and says as follows: 987

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, occupation and residence? A. Oscar W. Kocktitzky; age, twenty-four; solicitor for Wyckoff, Seamans & Benedict; residence, No. 3023 Locust street, St. Louis, Mo.

2 Q. Did you reside in the City of St. Louis, Mo., on and prior to January 31, 1899? A. Yes, sir.

3 Q. Have you at any time made a canvass of offices and places of business in the City of St. Louis, Mo., for the purpose of ascertaining whether or not

988 the persons or concerns upon whom you called used typewriting machines? A. I did.

4 Q. Please state when you made such canvass? A. The last part of January, 1899.

5 Q. Please state whether or not you have in your possession a list of the concerns upon whom you called and the time when you called upon them? A. I have.

6 Q. At the time you made these calls upon the various concerns, of which you have a list, what was the object or purpose of your calls upon or visits to these various concerns? A. To find what the machine made by Wyckoff, Seamans & Benedict was commonly known by.

989 7 Q. To what kind of a machine do you refer to in your last answer? A. Typewriter.

8 Q. What question, if any, did you ask at these various places at which you called, concerning typewriters or typewriting machines? A. What typewriter do you use?

9 Q. And did you at the time note or make any minute of the reply or response which was made to your question, at the various places that you called? A. I did.

10 Q. Have you now in your possession a true list of the various concerns upon which you called and of the responses which you received in answer to the questions asked by you? A. I have.

990 11 Q. Is the list which I now show you a true copy of the names of the concerns and persons upon whom you called, their places of business, the time when you called, and the replies that you received to your inquiry. What typewriter do you use? A. Yes, sir.

The list produced by witness is offered in evidence and marked Complainant's Exhibit "Kochtitzky St. Louis List."

CROSS-EXAMINATION by Mr. Fisher: 991

12 Q. How did you happen to call upon these particular people whose names are given on the list that has been offered in evidence? A. I was employed by the Remington people in St. Louis and was furnished a list of parties to call upon, and these are the names of the parties in the list that was so furnished me.

13 Q. Did not any of the parties upon whom you called state that they used the Remington Standard or the Remington Standard typewriter? A. No, sir.

14 Q. I call your attention to the City Directory of St. Louis for the year 1899, and ask you to state how you find the business of Wyckoff, Seamans & Benedict indexed in said Directory? A. Remington 992
Standard Typewriters, M. K. Deale, Mngr., 714 Locust St.

15 Q. I ask you to examine the St. Louis City Directory for the year 1897 and state whether or not you find the business of the Wyckoff, Seamans & Benedict similarly indexed? A. I find it indexed "Remington Standard Typewriter, Thomas A. Goodman, Mngr., 714 Locust."

16 Q. I call your attention to the Directory of the Kinloch Telephone Company of St. Louis and ask you to state how you find the business of Wyckoff, Seamans & Benedict indexed? A. I find it indexed "Wyckoff, Seamans & Benedict, Typewriter Supplies, 714 Locust." 993

17 Q. I call your attention to the Bell Telephone Company's Directory of St. Louis and ask you to state in what way you find Wyckoff, Seamans & Benedict indicated in said directory? A. I find it indexed "Wyckoff, Seamans & Benedict, Typewriter, 714 Locust."

18 Q. Do you find in either of said telephone directories the name Remington or Remington Standard used in conjunction or in connection with

994 the name of Wyckoff, Seamans & Benedict? A. I do not.

19 Q. State if you know how the business of Wyckoff, Seamans & Benedict is advertised on their store windows in this city? A. The Remington Standard Typewriter.

REDIRECT-EXAMINATION by Mr. Donnelly:

20 Q. State whether or not there is a large board sign over the door and windows of the store of Wyckoff, Benedict & Seamans, 714 Locust street, St. Louis, Missouri. A. There is.

21 Q. State what words, if any, said sign bears,
995 if you now recollect? A. I believe it is the Remington or the Remington Typewriter.

RECROSS-EXAMINATION by Mr. Fisher:

22 Q. State how long, if you know, the board sign last referred to by you has been in use? A. I should judge about three or four years, while they have been in that office room.

23 Q. Do you know this of your own knowledge? A. I remember seeing it there several years ago.

(Signed) OSCAR W. KOCHTITZKY.

Subscribed and sworn to before me this the sixteenth day of June, A. D. 1899.

996

WILLIAM L. RODGERS,
[NOTARY'S SEAL.] Notary Public,
City of St. Louis, Mo.

My term expires April 3, 1903.

STATE OF MISSOURI, } ss.: 997
City of St. Louis, }

I, WILLIAM L. RODGERS, a Notary Public within and for said city and State, do hereby certify that on this sixteenth day of June, A. D. 1899, between the hours of 9 o'clock A. M. and 6 o'clock P. M. in the city and State aforesaid, appeared before me pursuant to stipulation, Oscar W. Kochtitzky as witness, and H. D. Donnelly appeared as counsel for complainant, and George P. Fisher as counsel for respondent, and the said Oscar W. Kochtitzky being by me first duly cautioned and sworn to testify the whole truth and nothing but the truth, and being carefully examined, deposed and said as appears by his deposition hereto annexed. 998

And I further certify that said deposition was then and there reduced to writing by me, and was, after it had been reduced to writing, subscribed by said witness in my presence between the hours aforesaid.

In testimony whereof I have hereunto set my hand and official seal at the City of St. Louis, State of Missouri, this, the 16th day of June, A. D. 1899.

(Signed) WILLIAM L. RODGERS,
[NOTARY'S SEAL.] Notary Public,
City of St. Louis, Mo.

My term expires April 3, 1903. 999

1000 **Complainant's Exhibit "Kochtitzky's St. Louis List."**

JANUARY 31, 1899.

Copeland Medical Institution.....202 Odd Fellow Bldg.
Use the Remington.....11.20 A. M.
Lehigh Valley R. R. Co.....505 Houser Bldg.
We use the Remington.....11.30 A. M.
Parker & Russell Mining Co. .....417 Pine St.
The Remington.....11.40 A. M.
McLeod Lumber Co.....603 Houser Bldg.
Remington.....1.15 P. M.
Inland Type Co.....219 Pine St.
Remington.....1.25 P. M.
Bucktold Printing Co.....2nd & Pine Sts.
Remington.....1.30 P. M.
1001 Annan, Burg & Smith.....R. R. Exchange.
Remington.....1.40 P. M.
Green Com. Co .....Laclede Bldg.
Remington.....1.50 P. M.
A. J. Child & Son. .....209 Market St.
Remington.....2.15 P. M.
Graham Paper Co.....219 Main St.
Remington.....2.25 P. M.
St. Louis Wholesale Gro. Assn.....409 So. 7th St.
Remington.....2.50 P. M.
Scudder & Gale Gro. Co .....714 Spruce St.
All Remingtons.....2.55 P. M.
Jas. M. Houston Gro. Co.....800 Spruce St.
Remington.....3.00 P. M.
J. M. Anderson Gro. Co.....816 Spruce St.
Remington.....3.05 P. M.
Election Commissioner's Office.....City Hall.
1002 Remington.....3.20 P. M.
Dr. S. C. Martin.....606 Holland Bldg.
Remington. New Remington.....3.40 P. M.

February 1, 1899.

Purina Mills.....8th & Gratiot Sts.
We use the Remington. Wyckoff, Seamans & Benedict the maker.....1.00 P. M.
The Banner Buggy Co.....3rd & Chouteau.
We use the Remington altogether.....1.10 P. M.
N. K. Fairbank Co.....3rd & Convent Sts.
We use the Remington all the time. Here and in the main office.....1.25 P. M.
Anheuser-Bush Brew. Co. Use the Remington. Nearly all of them are the Remington.....1.45 P. M.
Use the Remington and the Smith Premier. Spoke quite often of the Remington Typewriter.....2.00 P. M.

Long-Mansfield Lumber Co.....810 Fullerton Bldg.
Mr. C. J. Mansfield.
Several, Remingtons and Smiths.....10.00 A. M.
American Surety Co.....210 Wainright Bldg.
Remington.....10.04 A. M.
Charles H. Turner & Co.....208 Wainwright Bldg.
Remington.....10.06 A. M.
The De La Vergne Ice Ref. Mfg. Co.....717 Wainwright Bldg.
Remington.....10.08 A. M.
The Collier Estate.....708 Wainwright Bldg.
Don't use any. Could see the Remington in next room.....10.15 A. M.
Big Muddy Coal & Iron Co.....912 Wainwright Bldg.
Using the Remington.....10.19 A. M.
Rutledge & Kilpatrick.....719 Chestnut St.
We are using the Remington machine.....10.25 A. M.
Dr. O. D. Whittier.....708 Pine St.
Remington. Spoke of the Remington-Sholes.....10.33 A. M.
Burlington Route.....511 Globe-Democrat Bldg 1004
General P. & T. Dept.
We use two different kinds; Smith and Remington.....10 37 A M.
General Freight Dept.
Remington, most of them.....10.40 A. M.
Louis Ernst & Co.....515 Holland Bldg.
Use the Remington. I would not use anything but the Remington.....10.45 A. M.
Phœnix Life Ins. Co.....310 Odd Fellow Bldg.
Cashier B. W. McLain.
Use the Remington.....11.10 A. M.
Thiel's Detective Agency.....723 Odd Fellow Bldg.
Remington, that's all.....11.15 A. M.

Feb. 1, 1899, continued.

Providence Chem. Co.....8500 So. 8th St.
Use the Remington. Spoke of the Remington several times... 2.55 P. M.
Hammer Dry Plate Co.....Ohio & Miama Sts.
The Remington. The No. 7 Remington is the best machine on the market..... 3.35 P. M. 1005
Liquid Carbonic Acid Mfg. Co.....Cherokee & Lamp Ave.
Using the Remington..... 3.50 P. M.

February 2, 1899.

St. Louis Screw Co.....18th & Palm Sts.
Use the Remington. Said a good deal about the Remington... 9.00 A. M.
Mallinckrodt Chem. Co.....2nd & Mallinckrodt Sts.
The Remington. We have the latest Remington that is out.
Spoke of the Remington being the best machine..... 9.20 A. M.

ST. LOUIS, MO., June 16/99.

I hereby identify the above list as the one used and referred to in the deposition of Mr. Oscar W. Kochtitzky, hereto annexed.

WILLIAM L. ROGERS,
Notary Public,
St. Louis,
Missouri.

[NOTARY'S SEAL.]

My term expires Apl. 3/1903.

1006 IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF VERMONT.

| | |
|---|---|
| WYCKOFF, SEAMANS & BENEDICT<br>vs.<br>THE HOWE SCALE COMPANY OF 1886. | In Equity. |

1007

INDIANAPOLIS, IND., June 17, 1899.

TESTIMONY taken before Rowland Evans, a Notary Public in and for the County of Marion and State of Indiana, under and pursuant to stipulation in this cause, and as Special Examiner, by consent, under the Sixty-seventh Rule in Equity, as amended.

APPEARANCES:

H. D. DONNELLY, for Complainant.
GEORGE P. FISHER, Junior, for Defendant.

1008

GEORGE E. FIELD, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

EXAMINED by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. George E. Field; forty years; Indianapolis; manager for Wyckoff, Seamans & Benedict, Indianapolis office.

2 Q. How long have you been manager for Wyckoff, Seamans & Benedict at Indianapolis? A. Since January, 1885.

3 Q. What is the character or kind of business 1009
which you have managed or conducted, and are now managing and conducting for Wyckoff, Seamans & Benedict at Indianapolis? A. The sale of Remington typewriters and supplies; the repair of Remington typewriters, and the rental of machines.

4 Q. In conducting and managing the business of Wyckoff, Seamans & Benedict at Indianapolis, have you or not, during the whole period of your service, come in contact and communication with purchasers and users of typewriting machines? A. I have.

5 Q. Do you or not know by what name, if any, the typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict are generally known in the trade and among purchasers and users of 1010
typewriting machines in and about the City of Indianapolis? A. The machine is known as the Remington.

6 Q. Do you know whether or not the business of Wyckoff, Seamans & Benedict which you have carried on in the City of Indianapolis is known by any other name than Wyckoff, Seamans & Benedict, and, if so, please specify by what other name, if any, their business is designated or referred to? A. We are often called the Remington Typewriter Company, and letters frequently come to us so addressed.

7 Q. For about how long a period has the designation or name referred to in your last answer been 1011
applied to the business of Wyckoff, Seamans & Benedict in this city; and for how long a period of time, to your knowledge, have letters been addressed by that name to the concern that you represent? A. From the beginning of the branch office which was started by me.

8 Q. When was the branch office started by you? A. In January, 1885.

9 Q. Have you in your possession or can you produce any written or documentary evidence showing or tending to show that the concern Wyckoff, Seamans & Benedict is designated or addressed as the

1012 Remington Typewriter Company, or by any similar name, and if so, will you produce the same? A. I have here eight envelopes, that is, the face of envelopes, showing addresses as follows: Remington Typewriter Agency, Remington Typewriter Co., Remington Typewriting Co., Agent Remington Typewriter Co. and The Remington Typewriter Exchange, all of these without street address except one, and addressed simply Indianapolis, Ind.

10 Q. Are the parts of envelopes which you have produced portions of envelopes in which communications were addressed to, and received by Wyckoff, Seamans & Benedict through the mails and in the ordinary course of business? A. Yes, sir.

1013 11 Q. Do you or not know whether the communications which were in the envelopes, parts of which you have produced, were intended for Wyckoff, Seamans & Benedict? A. They were all intended for Wyckoff, Seamans & Benedict.

The several portions of envelopes produced by the witness, and identified by him, being eight in number, are offered in evidence, and are marked "Complainant's Exhibit, Remington Typewriter Indianapolis Envelopes," numbers 1 to 8 inclusive.

12 Q. Are the envelopes produced by you the only ones which you have received during the time you
1014 have conducted the business of Wyckoff, Seamans & Benedict, bearing the name Remington Typewriter Company, &c., or have you received others bearing the same or similar names, and if so, during what period of time? A. The envelopes produced are only a few picked up at random this morning; one is postmarked June 6, 1899; one is postmarked June 12, 1899; and two are postmarked June 14, 1899; and several addressed in a similar way are received every week; and have been ever since I have been in charge of the business.

13 Q. I now call your attention to an envelope addressed to the Remington Typewriter Company,

12 Market street, Indianapolis, Indiana, and ask you 1015
to examine the same and say whether or not you have ever before seen said envelope, and what you know concerning the same? A. I saw this envelope in March of this year. It was delivered at our office after it had been delivered and opened by the Rem-Sho Typewriter Company in this city as noted on the envelope.

14 Q. Did the envelope at the time it was delivered contain any written communication? A. It did.

15 Q. For whom was said communication intended? A. It was intended for us.

16 Q. And by "us" whom do you refer to? A. Wyckoff, Seamans & Benedict.

The envelope produced by the witness and 1016
identified by him is offered in evidence, and is marked Complainant's Exhibit "Rem-Sho Indianapolis Envelope, March 15, 1899."

17 Q. Do you know of or recall any other instance or instances where letters intended for the concern which you represent were delivered to the so-called Rem-Sho Typewriter Company in this city? A. I don't recall any other case.

18 Q. Do you or not recall the fact that there were other cases, I mean specific cases, which you are not now able to mention?

Question objected to as immaterial, irrelevant 1017
and incompetent, and as leading.

A. I don't recall any others specifically.

19 Q. Is there not a concern doing business in this city under the name of the Remington Sholes Company? A. There is a concern here of that name.

20 Q. What is their business, if you know? A. Selling the Rem-Sho typewriters.

21 Q. For how long a period of time, to your knowledge, has the Remington-Sholes typewriter, or Rem-Sho typewriter, been in this market and offered for sale? A. About a year and a half.

22 Q. Where is the office of the so-called Reming-

1018 ton-Sholes Company located? A. At Number 122 East Market street.

23 Q. Do you know of any instances or any circumstances showing or tending to show confusion between the business or place of business of Wyckoff, Seamans & Benedict and the Remington-Sholes Company in this city, and if so, please state what you know on that subject?

Question objected to as immaterial, irrelevant and incompetent, and as calling for a conclusion of the witness.

A. There has been a great deal of confusion, particularly in telephone calls, and we have had com-
1019 plaints from our customers that repair calls didn't receive prompt attention, and in one instance we found the call had been made at the Rem-Sho office, and the error was not corrected by the Rem-Sho people. This confusion is due to the fact that the Rem-Sho people had their name in the telephone directory under "Remington-Sholes Company—Typewriters—122 E. Market." The name Remington Typewriter Company, Wyckoff Seamans and Benedict, 12 E. Market St., did not appear in the alphabetical part of the telephone directory until the issue of December, 1898. We had it placed in this way for the reason that several of our friends gave us the information that the Rem Sho people
1020 were getting a number of telephone calls which were intended for us.

24 Q. State, if you remember, whether the name "Remington" has or has not always appeared in the classified list "Typewriters," in connection with the name Wyckoff, Seamans & Benedict? A. I think the name Remington has always appeared with the name Wyckoff, Seamans & Benedict under the classified list.

25 Q. I show you two printed leaves which purport to have been taken from some publication and ask you to examine the same and state from what publication they were taken, if you know? A.

They were taken from the Central Union Telephone 1021
Directory of the City of Indianapolis, dated December, 1898.

The two leaves taken from the telephone directory of 1898 are offereded in evidence, and are marked "Complainant's Exhibit Indianapolis Telephone Directory Leaves 1 and 2."

26 Q. Do you now recall any instance or instances where expressmen or people having business with the office of Wyckoff, Seamans & Benedict have called at the Rem-Sho office by mistake, or any instances where people having business with the Rem-Sho Company have called at the office of Wyckoff, Seamans & Benedict, supposing it was the Rem-Sho 1022
office?

Same objection as to question 18.

A. I don't recall any instance where a party has called at the Rem-Sho office thinking that he was entering the Remington office, but we have a number of calls at our office from people who had goods to deliver to the Rem-Sho office. Yesterday a man called with two typewriter cylinders or platens; he said he had reground them for the Remington people, and he seemed somewhat surprised when I told him that he did not do the work for us, as we did that kind of work ourselves. This week a driver from the Indianapolis Stove Company called and wanted to de- 1023
liver to us a number of metal blotter baths, saying that they were for the Remington people. Draymen have sometimes brought typewriters to us when they were intended for the Rem-Sho people, as well as the drivers for the express companies.

27 Q. Were the platens or cylinders and the blotter baths, or either of them, intended for Wyckoff, Seamans & Benedict, or had they ordered any such goods? A. We had not ordered any of the articles mentioned.

28 Q. Do you know whether the two cylinders, or platens, or the blotter baths, were intended for the

1024 Remington-Sholes Company, or Rem-Sho Company? A. I suppose they were.

29 Q. State whether or not you have ever been asked or interrogated as to the connection, if any, between the business of Wyckoff, Seamans & Benedict, and that of the Remington-Sholes Company, or as to the connection between the typewriting machines which you sell, known as the Remington, and the so-called Remington-Sholes, or Rem-Sho typewriter?

Same objection as to Question 18.

A. I have frequently been asked what connection we had with the Rem-Sho typewriter. Only a few
1025 days ago a young man who was a stranger to me asked me what this new machine of ours was, while I was standing on the street corner waiting for a car.

30 Q. What reply, if any, did you make to the question of the young man? A. I told him we had no connection with the machine; that it was sold by an independent company who were using our name, or a part of it, at least.

31 Q. What machine did the young man refer to? A. The so called Rem-Sho typewriter.

Cross-examination by Mr. Fisher:

32 x-Q. About how many letters do Wyckoff, Seamans & Benedict receive at its office in this city per
1026 day? A. Fifteen to twenty-five.

33 x-Q. Has that been about the average for the last year or two? A. It has.

34 x-Q. How did you happen to preserve the parts of the eight envelopes referred to in your answer to direct-question 9? A. For years I have made it a practice to separate the front from the back of the envelopes to see that no enclosures remained in the envelopes or stamps, and usually the backs have been thrown in the waste paper basket, while the reverse side of the face of the envelopes have been used for pencil memoranda.

35 x-Q. Did you receive any request or instruction 1027
from any one directing you to preserve any envelopes that may have come to your office after having been opened by mistake by the Remington-Sholes office? A. I did not.

36 x-Q. Are you familiar with the business cards used by the Remington-Sholes Company in transacting its business here in Indianapolis? A. I think I have seen the card, but I can't describe it.

37 x-Q. I now show you a business card, and ask you to state whether that is the style of business card employed by the Remington-Sholes Company in transacting its business in this city? A. Yes, I think it is.

The card shown witness is filed in evidence 1028
and marked "Defendant's Exhibit Rem-Sho Indianapolis Business Card."

38 x-Q. State, if you know, how the company that you represent is indexed in the Indianapolis City Directory? A. Under the heading "Typewriting Machines," in the classified portion of the Directory, the name appears "Remington Standard Typewriters—Wyckoff, Seamans and Benedict, 12 E. Market." Immediately above appears, "Remington-Sholes Company, the Rem-Sho typewriter, 122 E. Market."

GEORGE E. FIELD.

Nine envelope exhibits, two telephone directory 1029
leaves and one card of Remington-Sholes Company attached to deposition.

1030 UNITED STATES OF AMERICA, }
District of Indiana. }

STATE OF INDIANA, }
Marion County, } ss.:

I, ROWLAND EVANS, a notary public in and for the County and State aforesaid, and Special Examiner in this cause by consent of the parties, do hereby certify that pursuant to agreement of parties in the above mentioned cause wherein Wyckoff, Seamans & Benedict is complainant, and The Howe Scale Company of 1886 is defendant, I was attended at my office in the Government Building, in the City of
1031 Indianapolis, Marion County, Indiana, on the 17th day of June, 1899, by H. D. Donnelly, Esq., of counsel for said complainant, and also by George P. Fisher, Jr., Esq., of counsel for said defendant; that the aforesaid witness, George E. Field, who was of sound mind and of lawful age, was by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth and nothing but the truth; and he thereupon testified as is above shown; and that the deposition by him subscribed as above set forth was by me reduced to typewriting in the presence of the witness, and from his statements, and was subscribed by the witness in my presence, and said deposition was taken on the day and year last above written in accordance with the
1032 said agreement of parties. I further certify that I am not of counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause.

Witness my hand and notarial seal, at Indianapolis, this 20th day of June, 1899.

ROWLAND EVANS,
[SEAL.] Notary Public and Special Examiner.

My commission expires November 1, 1901.

IN THE CIRCUIT COURT OF THE UNITED STATES 1033

FOR THE DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT
vs.
THE HOWE SCALE COMPANY OF 1886.
In Equity.

1034

PITTSBURGH, PA., July 18, 1899.

TESTIMONY taken before Harry M. Stein, a Notary Public in and for the County of Allegheny, State of Pennsylvania, under and pursuant to stipulation in this cause, and as Special Examiner by consent, under and pursuant to the Sixty-seventh Rule in Equity as amended. Testimony taken on behalf of complainant.

APPEARANCES:

H. D. DONNELLY, for Complainant.
GEO. P. FISHER, Jr., for Defendant.

1035

ANDREW J. SCORER, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

EXAMINED by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. A. J. Scorer; age, thirty-six; residence, Pittsburgh; occupation, typewriter salesman.

2 Q. In whose employ are you now engaged as a typewriter salesman? A. United Typewriter and Supply Co.

1036 3 Q. How long have you been engaged in the occupation of a typewriter salesman? A. About seven years.

4 Q. During that period of seven years with what companies or concerns have you been engaged as a typewriter salesman? A. Smith Premier, U. T. & S. Co., and Remington-Sholes.

5 Q. During what period of time were you engaged as a typewriter salesman in selling the Remington-Sholes typewriter or selling said typewriter in connection with other business or occupation? A. From December, '97 to about July, '98.

6 Q. Who employed you to sell the Remington-Sholes typewriter, so called? A. S. M. Evans, man-
1037 ager of the Howe Scale Co.

7 Q. If you know, state what S. M. Evans' relations were to the Howe Scale Co. at the time you were selling the Remington-Sholes typewriter? A. He was manager of the Pittsburgh branch.

8 Q. Do you mean manager of the Pittsburgh branch of the Howe Scale Co.? A. Yes, sir.

9 Q. During the period referred to in the previous answers, what was the connection of the Howe Scale Co. with the Remington-Sholes typewriter, so far as you know? A. They were general selling agents.

10 Q. When you were first employed to sell the Remington Sholes typewriter from whom did you
1038 receive instructions in relation to the sale of the same? A. S M. Evans.

11 Q. While you were engaged with the Howe Scale Co. in selling typewriters, state what your duties were? A. Selling typewriters.

12 Q. During the time you were connected with the Remington-Sholes Typewriter, and engaged in the sale thereof, state whether or not you were canvassing among typewriter users and visiting persons who were using typewriters, and if so, in what locality or localities? A. Yes; I was canvassing Pittsburgh and the surrounding towns.

13 Q. About how many typewriter users do you

think you, on the average, visited daily? A. About 1039
20 or 30.

14 Q. State what your custom was when you visited users or persons whom you desired to sell typewriters as regards introducing yourself? A. I present my card and tell them that I was representing the Remington-Sholes Typewriter.

15 Q. State whether or not, when you were canvassing among users of typewriters, any inquiries were made of you concerning the origin of the Remington-Sholes machine or as to who were the makers thereof? A. Yes, sir; quite a number of them.

16 Q. You may state, please, what the character of such inquiries were that were made by persons 1040
upon whom you called with a view to selling them the Remington-Sholes Typewriter? A. Well, they would ask what connection it had with the Remington Standard machine and in what particular it differed from it.

17 Q. Were any inquiries made by any of the people upon whom you called in relation to its being made by the Remington Company or the people who made the Remington machine, and if so, state what was said in that regard.

Question objected to as leading.

A. Well, there was so many people asked that, that I could not recall all of them. 1041

18 Q. Please state whether or no you received any instructions from any one as regards the use of the name Remington, in connection with the sale of the Remington-Sholes machine, and if so, please state briefly what instructions, if any, you received. A. In talking to a Mr. Baldwin in regard to the Remington-Sholes his instructions were to tell anything that was necessary to get a foothold.

19 Q. Who was Mr. Baldwin, referred to in your last answer? A. I understood that he was Superintendent of Agency.

1042 20 Q. Superintendent of what Agencies? A. Of the Remington Sholes Typewriter Company.

21 Q. Did this Mr. Baldwin visit the office of the Howe Scale Company in Pittsburgh while you were engaged in selling the Remington-Sholes Typewriter and if so, state how frequently. A. Yes, sir; he was there once that I remember of.

22 Q. When was that as nearly as you remember? Was it soon after you began the canvass for the sale of the Remington-Sholes Typewriter? A. Well, I don't remember what time that was.

23 Q. What, if anything, in the way of instructions did Mr. Baldwin give you, or did anybody give you, in relation to the name "Remington," or the con-
1043 nection or association of that name with the Remington-Sholes machine?

Question objected to so far as it inquires with respect to instruction received from persons whose connection with the defendant or with the Remington-Sholes Company is not shown.

A. He told me that I had now been engaged by the Remington-Sholes Typewriter Company, and that Mr. B. M. Alkire would have charge of the office, and that my business was to report to Mr. Alkire.

24 Q. State what representations, if any, were made in the sale of the so called Remington-Sholes machine as regards its association with the name
1044 Remington.

Question objected to as indefinite and incompetent, it not appearing by whom the representations were made concerning which the question is asked.

I mean any one connected with the office in Pittsburgh engaged in selling the Remington-Sholes machine or by Mr. Baldwin? A. I asked Mr. Baldwin and he told me that my business was to go out and sell typewriters and to tell anything that was necessary to sell them.

25 Q. State, if you know, what was said by Mr.

*Baldwin in relation* to the connection of Mr. Frank- 1045
lin Remington with the old Remington Typewriter, or the old Remington concern, and what representations, if any, were made in that regard, in the sale of the Remington-Sholes machine, to your knowledge? A. I don't remember Mr. Baldwin having said anything about Mr. Remington.

26 Q. In your instructions in the sale of the so-called Remington-Sholes Typewriter or in the sale thereof, state whether or not the name Remington was given prominence, and if so, to what extent?

Question objected to as incompetent if it calls for instructions that were in writing, and the question is further objected to as improper if it calls for testimony relative to instructions given 1046
to witness by others than the defendant or its agents, or by the Remington-Sholes Co. or its agents.

A. Well, I don't know.

27 Q. Do you now recall any representations that were made concerning the Mr. Remington of the Remington-Sholes Co., and his connection with the old Remington Typewriter, and if so, please state what you remember in that regard.

Question objected to as leading and for the further reason that the witness has already stated that he did not remember Mr. Baldwin having said anything about Mr. Remington. 1047

I mean representations made by you or anybody else connected with the sale of the Remington-Sholes typewriter to your knowledge.

Counsel for defendant objects to the final clause of the question because it calls for any representation that may have been made by witness, except under authority from defendant or its agents.

Question by Mr. Scorer: Am I to understand that this represention came from me or some representative of the Remington-Sholes Co.?

1048 Answer by Counsel for Complainant: I mean any representation made by you when you were engaged as salesman in selling the Remington-Sholes typewriter, or by anybody else connected with the Remington-Sholes typewriter during the term of your employment in selling said machine.

A. I always understood that this Mr. Remington was one of the Remingtons who manufactured the Remington Standard, and told prospective purchasers that he was one of the same Remingtons.

28 Q. Do you now know or recall the fact that any person or persons who purchased a Remington-Sholes machine or machines, either of you or of anybody else, believed or supposed, at the time of mak-
1049 ing such purchase, that the Remington-Sholes machine was made by the Remington people or by the people who manufacture the so-called Remington Typewriter, and if so, state briefly what you know on that subject.

Objected to as immaterial, irrelevant and incompetent. The testimony of the person so purchasing a Remington-Sholes machine being the best evidence upon this point.

A. Yes, sir. A Mrs. Vance, I believe, bought a Remington-Sholes machine, believing that it was manufactured by the Remington people.

1050 Counsel for defendant objects to and moves to strike out the answer as giving a mere impression or belief of the witness, and hence as being incompetent, immaterial and irrelevant.

29 Q. Where does Mrs. Vance reside and where did she reside at the time she purchased this so-called Remington-Sholes machine? A. Sharpsburg, Pa.

30 Q. Do you know whether previous to the time she bought this so-called Remington Typewriter she had been a user of the so called Remington Typewriter? A. Yes, sir; she had. For eight or nine

years, and refused to have anything except a Rem- 1051
ington.

31 Q. From your observation and experience in the sale of typewriting machines, and particularly of the so-called Remington-Sholes typewriter, what, in your judgment, caused intending purchasers or users of typewriting machines to make the inquiry of you, what connection the Remington-Sholes typewriter had with Remington Standard Typewriter? A. Because the Remington Standard typewriter was more popular than any other make of machine.

32 Q. State whether or not you also attributed the fact of such inquiry being made by reason of the use of the name "Remington" in connection with the manufacture and sale of the so-called Reming- 1052
ton-Sholes typewriter.

Question objected to as calling for a mere opinion of the witness

A. Yes, sir.

33 Q. During the time you were engaged in the sale of the so-called Remington-Sholes typewriter, about how many machines were sold by the Howe Scale Co. or Remington-Sholes Co., to your best knowledge?

Question objected to as immaterial and irrelevant.

A. I understood that about 90 machines.

34 Q. Where were said machines sold? A. In 1053
Pittsburgh and vicinity.

35 Q. If you know, state at what price or prices the Remington-Sholes were sold in Pittsburgh and vicinity during the period that you were engaged in selling said machine.

Same objection as to Question 33.

A. From $67.50 up to $85.50.

36 Q. Was there any instructions as to price given you, and, if so, what were they. I mean instructions from your employers.

Same objection.

1054 A. Previous to Mr. Alkire's administration my instructions were to accept a reasonable price.

37 Q. And what did you understand that instructions to mean and how did you act upon it in selling the Remington-Sholes typewriter?

Same objection.

A. I understood that that meant a price which would show a reasonable profit.

Answer continued: Figuring $60.00 as a net basis.

CROSS-EXAMINATION by Geo. P. Fisher, Esq.:

38 Q. What typewriting machines are sold by the United Typewriter and Supply Co. by whom you
1055 are employed? A. Densmore, Yost and Century.

39 Q. By what companies are these several machines manufactured? A. Well, I dont know that.

40 Q. Is the Century typewriter the same as the old Caligraph? A It's known as the Twentieth Century Caligraph.

41 Q. It is commonly termed the Caligraph also? A. Well, I believe so.

42 Q. You may state if you know whether the United Typewriter and Supply Co. is in any way connected with or controlled by the Union Typewriter Co. or so called "Typewriter Trust"?

Question is objected to by complainant's
1056 counsel on the ground that the same is immaterial and irrelevant, and as calling for new matter, and not properly cross-examination.

A. I never heard of the Union Typewriter Co.

43 Q. Did you ever hear of the "Typewriter Trust" so called?

Same objection as the last.

A. I have heard talk that there was a trust.

44 Q. You may state whether you understand that the United Typewriter and Supply Co. is in any manner connected with or controlled by said so-called "Typewriter Trust."

Same objection as last, also as improper be- 1057
cause the question calls for the understanding of the witness and not for his knowledge.

A. No, sir; I don't.

45 Q. State, if you know, what companies manufacture the Yost machine, the Densmore machine, and the Caligraph, or 20th Century Caligraph?

Objected to as immaterial and irrelevant and as not proper cross-examination.

A. Well, I don't know who do manufacture these different machines.

46 Q. Does the United Typewriter and Supply Co. make such machines?

1058

Same objection.

A. I don't know.

47 Q. Don't you know where those machines come from, and what marks are upon the boxes in which the machines come?

Same objection.

A. Well, I have seen different boxes with different marks on them.

48 Q. State, if you know, what marks, if any are upon the boxes in which the Densmore machines are received?

Same objection.

1059

A. The Densmore Typewriter Co.

49 Q. State, if you know, what marks appear upon the boxes in which the Yost machines are received by the United Typewriter and Supply Co.?

Same objection.

A. I don't know.

50 Q. State, if you know, what marks, if any, are upon the boxes in which the Caligraph, or 20th Century Caligraph are received by the United Tpyewriter and Supply Co.?

Same objection.

1060 A. American Writing Machine Co.

51 Q. The business of the United Typewriter and Supply Co. is selling the machines manufactured by the American Writing Machine Co., the Densmore Typewriter Co. and the company that manufactures the Yost machine, is it not?

Same objection.

A. Well, I don't know.

52 Q. You know, do you not, that these are the machines that the United Typewriter and Supply Co. sell?

Same objection.

1061 A. Yes, sir; I know that my instructions are to go out and sell those machines and supplies.

53 Q. And does your company sell any other new machine?

Same objection.

A. Not that I know of.

54 Q. During the time that you were in the employ of the Howe Scale Co. or engaged in selling the Remington-Sholes Typewriter, you endeavored to transact your business with intending purchasers fairily, did you not? A. I tried to sell Rem-Sholes typewriters.

55 Q. Did you knowingly make any false statements to intending purchasers? A. No, sir.

1062 56 Q. In making sales or in approaching prospective purchasers did you use any business cards or circulars? A. Yes, sir.

57 Q. I call your attention to a business card upon which appears at the top the names "C. N. Fay, President, F. H. Head, V.-Pres., F. Remington, Gen'l Mgr., J. V. Paulsen, Sec. and Treas.," and beneath this a picture of a typewriter and the words "Remington-Sholes Company, 127 Rees St., Chicago. Rem-Sho Typewriter," and at the bottom of which appears the words, "Branch office, 107 Market St., Pittsburgh, Pa." Please state how this card compares

with the business cards used by you in making sales 1063
of the Remington-Sholes Typewriter, or in soliciting sales therefor? A. No, sir; I never saw that card at all. It would not compare with the card I used.

58 Q. Do you mean to say that you never used any card of this character? A. Yes, sir; that is what I mean to say that I never used that card or a card like it, while I worked for the Howe Scale Company.

59 Q. Did you at any time ever use a card in any respect similar to this card in attempting to make sales of the Remington-Sholes typewriter, or the Remo-Shole typewriter? A. Yes, sir.

60 Q. When did you use such card? A. During 1064
the time Mr. Alkire was manager.

61 Q. How did the card that you used during the time that Mr. Alkire was manager compare with the card that I have shown you? A. I don't remember just what it was like.

62 Q. Where was the place of business of the Remington-Sholes agency, during the time that Mr. Alkire was manager? A. 107 Market street, Pittsburgh.

63 Q. Please examine this card again and state whether, to the best of your knowledge and belief, it is not substantially identical with the cards that you used, except for the change in address printed in red ink at the bottom of the card? A. No, sir; it 1065
isn't anything like it.

64 Q. You mean to say that the cards which you used in selling or soliciting sales of the Remington-Sholes typewriter during the time that Mr. Alkire was manager were not at all like the card I now show you? A. I don't believe the cards we used were as large as that card.

65 Q. Without considering the size of the card, please state whether or not the cards that you used in soliciting sales of the Remington Sholes typewriter, during the time that Mr. Alkire was manager, were or were not, so far as the printed matter is

1066 concerned, like or unlike the card that I now show you?

Complainant's counsel objects to question as improper because it calls for new matter and is not proper cross examination.

A. I don't think they were like that card.

66 Q. Where did you get the cards that you used in selling Rem-Sho typewriters, during the time that Mr. Alkire was manager?

Same objection.

A. From Mr. Alkire.

67 Q. Did the cards that you used during such time contain the names of the officers of the Rem-
1067 ington-Sholes Company? A. I don't remember.

68 Q. Did the cards that you used at such time contain a picture of a typewriting machine? A. Yes, sir.

69 Q. Did the card that you used at such time contain the word "Rem-Sho," as it appears in the card I now show you; I mean the syllable, "Rem" upon one side of the picture, and the syllable "Sho" upon the other side of the picture? A. I think so.

70 Q. Did the card that you used at that time contain the words, "Remington-Sholes Company, 127 Rees St., Chicago"? A. I don't know.

71 Q. Did it contain the name "Remington-Sholes Company" at all? A. I don't know.

1068 72 Q. Did it contain the words, "Branch Office, 107 Market St., Pittsburgh, Pa."? A. I don't think it said anything about "Branch Office, Pittsburgh."

73. Q. If I understand you correctly, therefore, all that you really remember about that card was that it contained a picture of a typewriting machine with the syllable "Rem" on one side of the picture and with the syllable "Sho" at the other side of the picture. Is this correct? A. I don't understand the question that way.

Question read again to witness.

A. I remember that 107 Market street was on the 1069
card, also Pittsburgh, Pa. But not the word "Branch Office."

74 Q. And you do not recall whether the card bore the name of the company that you were representing or not? A. No, sir; I do not remember.

Counsel for defendant offers in evidence the card shown witness and referred to in Cross-Q. 57 *et seq.*, and the same is marked "Defendant's Exhibit, Remington-Sholes Pittsburgh Card."

Complainant's counsel objects to the introduction of card in evidence, 1st, because no sufficient foundation has been laid for the introduction in evidence of said card; 2d, because the defendant ought not to be permitted and it is 1070
improper for it to burden the complainant's record with its exhibits, and complainant moves to strike said card from the record.

Counsel for defendant replies that the witness having testified that it was his custom, when solicit ing sales for the Remington-Sholes typewriter to present his card, it is entirely proper for defendant to show the character of the card presented.

75 Q. From whom did you obtain the business card which you used in soliciting sales of the Remington-Sholes typewriter prior to the time when Mr. Alkire became manager? A. I had them printed 1071
myself.

76 Q. State, as nearly as you can remember, what appeared upon such card? A. Well, we had a cut of the machine in the centre of the card in pink, and my name printed right over it.

77 Q. Did the word "Rem-Sho" appear upon such card? A. I think it did.

78 Q. Did this word "Rem-Sho" appear in the same manner as it appears upon the card marked "Defendant's Exhibit Remington Sholes Company, Pittsburg Card"? A. No, sir.

79 Q. How did it appear? A. If it appeared at all

1072 it appeared under the name of the Howe Scale Co., on the lower left corner of card.

80 Q. Please state all that appeared upon that card, to the best of your recollection. A. Cut of the machine, 107 Market St., Pittsburgh, Howe Scale Co., Rem-Sho Typewriter, and my own name.

81 Q. Did you ever see any circulars issued by the Howe Scale Co. or by the Remington-Sholes Co., or circulars relating to theRem-Sho typewriter, during the time that you were engaged in selling the Rem-Sho typewriter? A. Yes, sir.

82 Q. Did you read such circulars? A. Yes, sir.

83 Q. Did you use them in soliciting sales of machines? A. No, sir.

1073 84 Q. I call your attention to a circular of the "Rem-Sho Typewriter," upon page 22 of which appears the following statement, "IN REGARD TO OUR NAME. The question is often asked 'What connection has the Remington-Sholes Company with the Remington Standard Typewriter? We answer, none whatever. The 'Rem-Sho' Typewriter is manufactured by the Remington-Shole Company in Chicago, Ill., U. S. A. It originated in the brain of Mr. Zalmon G. Sholes, a son of the original inventor of the Remington Standard Typewriter. In 1893, Mr. Sholes came to Mr. Remington, a son of the original manufacturer, of the well known typewriter which bears his name, and laid his plans and the results of his work before him. The two formed a partnership, and began at once to develop the type writer with which they are now identified. Later, 1074 a company was formed of strong capitalists to manufacture the machine and put it on the market, since when it has been tested by four years' use and the Nos. 2, 3, 4 and 5 models brought out under the personal supervision of Mr. Fay.

We state then, emphatically, that this company has no connection whatever with that well known and excellent machine, the Remington Standard Typewriter, and caution all possible customers against confusing the "Rem-Sho" with that machine or any other."

84½ Q. I ask you whether or not you remember having seen a statement of this character in the cir-

culars used while you were engaged in selling the Remington-Sholes Typewriter? 1075

The quotation and the question are objected to as immaterial and irrelevant, as new matter and not proper cross-examination.

A. Yes, sir; I guess I saw that.

85 Q. For what purpose were these circulars used? A. To get a prospective purchaser interested.

The circular or catalogue shown to the witness is marked for identification, "Defendant's Rem-Sho Typewriter Circular, Pittsburgh Office." But it is not introduced in evidence as it is believed that the same circular or catalogue has already been introduced by complainant. 1076 It is agreed, however, that if such circular has not heretofore been produced it may be produced at the hearing by either party with the same force and effect as if properly in evidence.

86 Q. Did not Mr. Alkire instruct you that in selling the Rem Shoe machine, you should conduct your bussiness and make all statements fairly and honestly and make no misrepresentations in regard thereto? A. No, sir; I never received instructions from Mr. Alkire, or anybody else of that kind.

87 Q. Did Mr. Alkire give you any instructions or directions or advice in regard to selling the Rem-Sho typewriter? A. Yes, sir; he said to go out and 1077 selll typewriters, and to use your own best judgment. He also said that he didn't believe that it was good policy to lay down any set rule to salesmen, as he believed in doing so took away a man's individuality.

88 Q. Did Mr. Alkire ever give you any direction or advice relative to the sale of Rem-Sho typewriters that would lead you to make any misrepresentations relative thereto? A. Mr. Alkire's orders were to go out and sell typewriters.

89 Q. (Question repeated.) A. (Same answer.)

90 Q. Is that the best answer you can make to my question? A. I think so.

1078 91 Q. How many times did you see Mr. Baldwin and talk with him? A. I only remember of seeing Mr. Baldwin in Pittsburg once. During the time he was here, I talked with him three or four times.

92 Q. How long was he here at that time? A. I should think about a week.

93 Q. Did you see him on more than one day? On how many days did you see him? A. I don't know that.

94 Q. In your efforts to sell the Rem-Sho typewriter what machine did you find to be the strongest competitor? A. The Remington.

95 Q. Did you find that that machine was generally known by the persons to whom you endeavored
1079 to make sales of the Rem-Sho machine? A. Yes, sir; I found that it was known to everybody that had ever used a typewriter.

96 Q. And you directed your efforts towards convincing the prospective purchasers that the Rem-Sho typewriter was a better machine than the Remington Standard, did you not? A. Yes, sir; I tried to make them believe the same thing.

97 Q. Did you believe that they were the same thing yourself? A. Yes, sir; I did for a long time; quite a while.

98 Q. How long had you been familiar with the typewriter business before you became connected with the sale of the Rem-Sho typewriter? A. About
1080 five years.

99 Q. And during that time you were familiar, of course, with the Remington Standard machine, were you not? A. To a certain extent.

100 Q. You knew what the machine looked like, did you not? A. Yes, I knew one when I saw it.

101 Q. You knew that the Remington Standard machine had peculiar marks upon it different from the marks that appeared on the Remington-Sholes typewriter, did you not? A. I don't know what you mean by peculiar marks.

102 Q. Well, for example, the name "Remington," the red seal with the words "Standard Rem-

ington Typewriter" appearing upon the paper table 1081
and frame, and the words "Remington Standard Typewriter, manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A.," appearing on the front cross-bar of the machine? A. Yes, there was some difference in appearance.

103 Q. At the time that you began selling the Rem-Sho typewriter, did you know who the Pittsburgh agent for the sale of the Remington Standard Typewriter was? A. Yes, sir.

Witness continues answer by saying, "I didn't know the Remington agent personally. I merely knew who he was.

104 Q. You knew where the Pittsburgh office of the Remington Standard typewriter was, did you not? 1082
A. I knew that it was on Wood street, some place.

105 Q. You knew, also, that the Remington Standard typewriter was manufactured and sold by Wyckoff, Seamans & Benedict? A. Well, in some places only.

106 Q. What do you mean by this expression, "In some places only"? A. I mean that Wyckoff, Seamans & Benedict did not sell their own machines in every city. But you knew that Wyckoff, Seamans & Benedict manufactured the Remington Standard typewriter and that there was an office for the sale of that machine here in Pittsburgh, did you not? A. I had heard so.

107 Q. Had you never seen their office, or passed 1083
by it, prior to the time you became engaged in the sale of the Rem-Sho typewriter. I mean the office in Pittsburgh for the sale of the Remington Standard typewriter. A. Not to the best of my knowledge.

108 Q. How long had you been in Pittsburgh prior to the time when you became employed for the sale of the Rem-Sho typewriter? A. Not a minute. Didn't even contract in Pittsburgh to come here at all.

109 Q. How long had you been in Pittsburgh before you saw the office at which the Remington Standard typewriter was sold? A. I don't know.

1084 110 Q. State approximately, if you can? A. Oh, I presume a month or so.

111 Q. Do you mean to say that you think it was a month from the time you came here and began to solicit orders for the Rem-Sho typewriter before you saw the office at which the Remington Standard typewriter was sold? A. I think so.

112 Q. Do you mean to say, or have the Court understand, that at the time you began the sale of Remington-Sholes typewriters you believed that the Rem-Sho typewriter was manufactured by Wyckoff, Seamans & Benedict? A. No, sir; I don't mean to say anything of the kind. I mean to say that I was led to believe that a Mr. Remington, who was con-
1085 nected with the Remington Typewriter, was engaged in the manufacture of the Rem-Sho.

113 Q. But you also believed, did you not, that the Remington-Sholes machine was made at Chicago by the Remington-Sholes Company, and that the Remington Standard machine was made by Wyckoff, Seamans & Benedict at Ilion, N. Y.? A. No, sir; I did not know that the Rem-Sho was made by the Remington-Sholes Company, Chicago.

114 Q. By whom did you believe it was made; I mean from the time when you began to sell the Rem-Sho typewriter? A. I believed it was made by Mr. Remington.

115 Q. How long did you continue in this belief
1086 after you became employed in the sale of the Rem-Sho typewriter? A. I don't know just how long.

116 Q. Do you think it was more than an hour or a day? A. Yes, sir.

117 Q. Do you think that you made a single sale of a typewriting machine before you were informed in any way, as by inspection of circulars, business cards, or letterheads, that the Remington Sholes Typewriter or Rem-Sho Typewriter was made in Chicago? A. Why, I knew that the Rem-Sho was made in Chicago before I contracted with them.

118 Q. Did you not also know, or believe, that the Remington Standard Typewriter was made in Ilion,

N. Y.? A. Yes, and I also believed that they had 1087
branch factories in other cities.

119 Q. How long had you been engaged in selling Rem-Sho typewriters before you examined the circulars or letterheads used in connection with the sale of such machines? A. I don't know. When I came to Pittsburgh to work there was not a catalogue in the house and it was quite a time before they got there.

120 Q. Had you seen any catalogues, circulars, letterheads, or business cards used by the Howe Scale Company or others in connection with the sale of the Remington-Sholes typewriter, prior to the time when you made your first sale of a Remington-Sholes typewriter? A. I don't remember. 1088

121 Q. You have stated, in your answer to x-Q. 95 that you found that the Remington Standard Typewriter was known to everybody that had ever used a typewriter, and in your answer to x-Q. 96 you stated that you endeavored to make prospective purchasers believe that the Rem-Sho typewriter and the Remington Standard were the same thing. Please state what representations you made to prospective purchasers? A. I represented to prospective purchasers that the Rem-Sho typewriter was manufactured by Mr. Remington who was connected with the Remington typewriter.

122 Q. Did you endeavor to explain to them why the two machines were in competition? A. Yes, 1089
sir.

123 Q. How did you endeavor to explain that? A. I endeavored to explain that things had not gone right with them and that he was putting out his own machine.

124 Q. Do I understand you to mean that you represented that Mr. Remington had had some disagreement with the company that made the Remington Standard, and that for this reason he had left them and was making his own machine, that is to say, was making the Rem Sho? A. No, I didn't understand that he had ever left them.

1090 125 Q. Then what do you mean by stating in your answer to C-Q. 123, when you say, "I endeavored to explain that things had not gone right with them and that he was putting out his own machine"? A. I mean just what I said before, with the exception that he had not left the Remington Company.

126 Q. Did you represent that the Rem-Sho machine was put out by Mr. Remington in competition with the Remington Standard machine because of some trouble in the company that manufactured the Remington Standard? A. I represented that he was putting the machine out largely for the reason that some of the patents had expired on the No. 2
1091 Remington.

127 Q. What did you mean by the expression in your answer to Cross-Q. 123, "I endeavored to explain that things had not gone right with them"? A. As far as expiration of patents was concerned.

128 Q. Who had said anything to you in regard to the expiration of the patents on the No 2 Remington machine? A. Emerson C. Echols.

129 Q. What position did Mr. Echols hold at that time? A. I understood that he was a representative of the Rem-Sho typewriter.

130 Q. Did he direct you to make this explanation? A. It was the explanation that he gave me which induced me to come to Pittsburgh to sell Rem-Sho
1092 typewriters, and with whom I also contracted to come to Pittsburgh to sell Rem-Sho typewriters.

131 Q. Did Mr. Echols also direct you to explain that the Remington-Sholes machine and the Remington Standard machine were both manufactured by Mr. Franklin Remington? A. No, sir; Mr. Echols did not say anything about Mr. Franklin Remington. He said Mr. Remington.

132 Q. Did Mr. Echols direct you to represent that the Remington-Sholes machine and the Remington Standard machine were manufactured by the same person or company? A. He gave me to understand that Mr. Remington, who was manufacturing the

Rem-Sho, was or had been connected with the Rem- 1093
ington.

133 Q. And that was the representation that you made to prospective purchasers, was it, when you were endeavoring to sell the Rem-Sho machine? A. Yes, sir.

134 Q. How long did you continue to make such representations? A. I don't know.

135 Q. In your direct-examination you have stated that a Mrs. Vance, you believed, purchased a Rem-Sho machine, believing that it was a Remington Standard. Now I ask you whether you can name any other person who you believe to have purchased a Rem-Sho machine under the impression or belief that it was a Remington Standard? In answering 1094
this question you will give me the name and address of any person in order that I may verify the fact. A. I did not use the word "Standard" in testifying in regard to Mrs. Vance. Well, I can give you the name and address of persons who have bought the Rem-Sho machine believing them to be Remington typewriters: Mrs. Vance, Sharpsburg; Williams, Sloan & Griffith, Greensburg, Pa.; Robbins & Kunkle, Greensburg; Halstead & McNaugher, Pittsburg.

136 Q. Are these parties to whom you made sales of Rem-Sho machines? A. Yes, sir.

137 Q. State about when the several sales were made, beginning with the sale to Mrs. Vance? A. I 1095
can't tell that.

138 Q. Can you not tell approximately when the sale to Mrs. Vance was made? A. No, sir.

139 Q. It was during Mr. Alkire's management, was it not? A. There is some question about that.

140 Q. What is the question? A. The question is who sold the machine, Alkire or I. I claim I sold it.

141 Q. But the sale was made during the time that Mr. Alkire was manager, was it not? A. No, sir. I don't agree with you. I claim the sale was made before Mr. Alkire ever came to Pittsburg.

1096 142 Q. Was the machine delivered before Mr. Alkire came to Pittsburg? A. Seven or eight of them.

143 Q. I am talking about the machine that was sold to Mrs. Vance. You will please state whether the machine that was sold to her was delivered to her before or after Mr. Alkire became manager? A. That I don't know, as we had sent quite a number of machines up there, and we couldn't get one that was fast enough for her. And whether the machine that she finally kept was sent up after Mr. Alkire's arrival or not, I don't know.

144 Q. State, if you know, whether Mr. Alkire had any conversation with Mrs. Vance in regard to the sale to her of the Rem-Sho typewriter? A. Yes, sir;
1097 I think he had.

145 Q. Did you give Mrs. Vance, or show to her, any business card or circular relating to the Rem-Sho typewriter? A. I don't think so.

146 Q. Did you discuss with her, prior to the making of the sale of the Rem-Sho machine, the relative merits of the Rem-Sho typewriter and the Remington Standard typewriter? A. Yes, sir.

147 Q. You found that she was familiar with the Remington Standard typewriter, did you not? A. Yes, sir.

148 Q. And that she had been using such typewriter? A. Yes, she had been using the Remington for eight or nine years.

1098 149 Q. What reason did she give you, if any, for not wishing to buy a Remington Standard typewriter, or a typewriter from the agents of Wyckoff, Seamans & Benedict? A. Because she did not like A. M. Martin.

150 Q. Who was A. M. Martin? A. I learned from her that he was the dealer of the Remington typewriter in Pittsburgh.

151 Q. And this was the reason that she gave you for not wishing to purchase the Remington Standard typewriter, was it? A. Well, I learned that she was in the market for a typewriter and insisted on

sending a machine up there, and did send it up at 1099
once.

152 Q. She had the machine on trial before any sale was made, did she not. I mean the Remington-Sholes machine. A. Yes. She was renting at the same time, a Remington machine.

153 Q. Did Messrs. Williams, Sloane & Griffiths have a machine on trial before purchasing? A. I took the machine out one day, and before leaving town the next day sold it to them.

154 Q. Did you leave the machine for them to try before you made the sale? A. The machine was in their office over night.

155 Q. You showed it to them before you made the sale? A. I showed it to the operator, 1100

156 Q. In the case of Halstead & McNaugher, was the machine left on trial or not? A. Yes, sir; three or four days.

157 Q. Was a bill of the machine that was sold to Mrs. Vance sent to her at the time she made the purchase? A. Well, I don't know. I do know that in connection with Mrs. Vance's case the matter was simply hanging fire until she got a perfect machine. And I was out of the city, owing to the illness and death of my mother, and Mr. Alkire called on Mrs. Vance and collected some money on the sale and for this reason, I presume, he claimed the credit of making the sale.

158 Q. Do you believe that Mrs. Vance, or either 1101
of the other parties mentioned in your answer to Cross-Q. 135, believed at the time they bought Rem-Sho machines that they were purchasing the Remington Standard typewriter manufactured by Wyckoff, Seamans & Benedict? And do you believe that Mrs. Vance thought that she was purchasing the same typewriter, to wit, the Remington Standard typewriter that you have stated she was using at the time she purchased the Rem-Sho machine? A. I believe that they bought Rem-Sho typewriters believing that they were being manufactured by a

1102 Mr. Remington who was connected with the Remington Standard typewriter.

159 Q. Please answer my question specifically in regard to the matter concerning which it inquires. A. Yes, sir, I do.

160 Q. Do you believe that Mrs. Vance bought the Rem Sho typewriter believing it was the same machine as the Remington Standard Typewriter which she was using at that time and was manufactured by Wyckoff, Seamans & Benedict, do you? A. Yes, sir.

162 Q. Before you made the sale to Mrs. Vance had you read the circular referred to in Cross-Q. 84? A. No, I don't think I had.

1103 163 Q. Were you ever informed by any one that the Mr. Remington, who is connected withthe Remington Sholes Company, was a son of the person of that name who was originally engaged in the manufacture of the Remington Standard typewriter, or the Remington typewriter? A. I don't think so.

164 Q. Were you ever informed that the Mr. Remington, who is connected with the Remington Sholes Company, was a son or relative of a person of that name who was in any way connected with the manufacture of the Remington Standard typewriter? A. I don't think so.

165 Q. In making your sales of Rem-Sho typewriters to the several parties mentioned in your an-
1104 swer to Cross-Q. 135, did you endeavor to convince them of the superiority of the Rem-Sho machine over the Remington Standard machine, or did they raise any question about the relative merits of these machines? A. Well, I presume they did, but I don't remember every little case that came up.

166 Q. You are positive, however, that you represented to them that the Rem-Sho machine was manufactured by Mr. Remington, are you? A. Yes, sir?

167 Q. Can you not state approximately when the sale of a Rem-Sho machine was made to Mrs. Vance? A. Well, if I get the credit of the sale I say January,

1898. And, if it was not considered a sale until Mr. 1105
Alkire talked to her, I would say June, '98.

168 Q. Did you conduct any of the correspondence in connection with the sale of Remington-Sholes machines during the period that you were employed in selling such machines? A. Well, not under Mr. Alkire's administration.

169 Q. Did you at any time? A. Well, I don't know. I may have written some personal letters or had them written.

170 Q. Do you know what kind of letterheading was used by the Pittsburgh office in endeavoring to sell Rem-Sho machines? A. I don't think they had any special letterhead until Mr. Alkire came.

171 Q. I show you a letterhead and ask you to 1106
state how it compares with the letterhead used after Mr. Alkire became manager? A. Well, I don't believe it compares at all.

172 Q. In what respects do you think it differs? A. Well, I don't think any of the printing on the corners was on, nor on the lower corners.

173 Q. State what you do think was on the letterheads used after Mr. Alkire became manager? A. I think the cut of the machine was on and the words "Rem Sho," the Pittsburgh address and Mr. Alkire's name.

174 Q. Was the name of the Remington-Sholes Company on such letterhead? A. I don't think so.

175 Q. Did the picture of the machine and the 1107
sylables "Rem" and "Sho" appear as on the letterheading I now show you? A. I think so

**The letterheading shown witness is marked for identification, "Remington-Sholes Company Letter Heading, Pittsburgh Office," and it is agreed that, inasmuch as a similar letterheading has already been introduced in evidence this letterheading may be introduced at the hearing by either party, subject to objection as to its materiality or admissibility.**

1108 REDIRECT-EXAMINATION by Mr. Donnelly:

176 Q. When you became a salesman for the sale of the Remington-Sholes machine, and during the time that you were so engaged in selling said Remington-Sholes machine did you know the value of the name "Remington" and its reputation in connection with typewriting machines? A. Yes, sir.

177 Q. In your observation and experience, and in canvassing for typewriting machines of any description which you have sold, is it or not a fact that you sometimes meet persons and sell typewriting machines to person who have not theretofore been owners or users of any typewriting machine?

1109 Question objected to as not proper redirect and as leading.

A. Yes, sir.

178 Q. In your observation and experience what do you say as to the fact, whether intending purchaser or purchasers of typewriting machines read catalogues which are handed to them?

Objected to as calling for the opinion of the witness and as not proper redirect-examination.

A. No, sir.

RECROSS-EXAMINATION by Mr. Fisher:

1110 179 Q. Please state what inscription, marks, name or address appeared upon the Rem-Sho typewriters sold by you.

Question objected to as not properly recross-examination.

A. Well, I don't know what's on the Rem-Sho machine.

180 Q. I ask you what name, address or other mark was upon the Rem-Sho machines that were sold by you during the time that you were engaged in selling such machines. A. Well, I know that

there is a plate on the front of the machine, but I 1111
dont' know what is on it.

181 Q. Don't you know what name, address or mark was on the Rem-Sho machines at the time you were offering them for sale. A. No, sir; I don't.

182 Q. Was there any name or any address on such machines so far as you know? A. There was something on that front plate, I do not know what it was. I don't know whether it was the name of the machine or the name of the company, or the address.

Examination closed.

(Signed) A. J. SCORER.

Attest: 1112

HARRY M. STEIN.

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THOMAS F. CREAN, a witness called on behalf of the complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. Are you the Thomas F. Crean who has heretofore testified as a witness in this case on behalf of the complainant? A. Yes, sir.

2 Q. Were you formerly in the employ of the Howe Scale Company of 1886, the defendant in this case, or in the employ of Page, Dennis & Co.? A. Yes, 1113
sir.

3 Q. Do you know what the business relations were between the Howe Scale Company of 1886, the defendant in this suit, and Page, Dennis & Co., during the time you were connected with the Howe Scale Company of 1886, or with Page, Dennis & Co.? A. Yes, sir.

4 Q. Please state what the business relations were between the Howe Scale Company of 1886 and Page, Dennis & Co. during the time you were in the employ of them or either of them? A. The firm Page, Den-

1114 nis & Co. was composed of Mr. William C. Page, only, Mr. Dennis having died many years ago. The business was conducted by Mr. Page under a contract with the Howe Scale Company of 1886, under which contract the Howe Scale Company owned and controlled the business of Page, Dennis & Co., Mr. William C. Page being the representative in New York City of the Howe Scale Company, and acting in New York as its sales agent.

5 Q. Have those relations existing between the Howe Scale Company of 1886 and Page, Dennis & Co. ever been changed or modified, in so far as you know, or been informed? A. I understand they continue up to this day.

1115 (Signed) THOS. F. CREAN.

Attest:

HARRY M. STEIN.

Cross-examination waived.

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UNITED STATES OF AMERICA,
Western District of Pennsylvania. }

STATE OF PENNSYLVANIA,
County of Allegheny, } ss.:

I, HARRY M. STEIN, a Notary Public in and for the County and State aforesaid, and Special Examiner in this cause, by consent of parties, do
1116 hereby certify that, pursuant to agreement of parties in the above mentioned cause, wherein Wyckoff, Seamans & Benedict is complainant and The Howe Scale Company of 1886 is defendant, I was attended at Room 410 Lincoln Hotel, Pittsburgh, Pa., on the 18th day of July, 1899, by H. D. Donnelly, Esq., of counsel for said complainant, and by Geo. P. Fisher, Jr., of counsel for said defendant; that the aforesaid witnesses, Andrew J. Scorer and Thomas F. Crean, who were of sound mind and of lawful age, were by me first carefully examined and cautioned and duly sworn to testify the truth, the whole truth and nothing but the truth; and they thereupon testified

as is above shown; and that the depositions by them 1117
subscribed, as above set forth, was by me reduced to writing in the presence of the witnesses and from their statements, and were subscribed by the witnesses in my presence, and said depositions were taken on the day and year last above written in accordance with the said agreement of parties. I further certify that I am not of counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause.

Witness my hand and notarial seal at Pittsburgh, this 18th day of July, 1899.

HARRY M. STEIN,
[NOTARY'S SEAL.] Notary Public and Special
Examiner. 1118

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NEW YORK, July 19, 1899, 11 A. M.

Met pursuant to agreement.

Present—H. D. DONNELLY, Esq., for Complainant.
GEORGE P. FISHER, Esq., for Defendant.

ROBERT MCKEAN JONES, recalled as a witness on behalf of complainant, testifies as follows: 1119

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. Are you the Robert McKean Jones, the person who has already testified as a witness in this case on behalf of the complainant? A. I am.

2 Q Referring to "Complainant's Exhibit *Phonographic World*, June, 1897," I ask you to state, if you know, whether or not said *Phonographic World* is to your knowledge publicly circulated, and, if so, where and to what extent? A. It is published in the City of New York and circulated widely throughout the United States and to some extent in foreign

1120 countries. The circulation is generally understood to be in the neighborhood of ten thousand copies per month.

3 Q. I now hand you a package of papers and ask you to examine the same and state what they are, if you know, and where they were received. A. It is a package of envelopes received in the ordinary course of business by the branch house of Wyckoff, Seamans & Benedict, located in St. Paul, Minnesota.

4 Q. What are these papers? Are they envelopes simply, or do they contain communications? A. They are envelopes from which the communications have been withdrawn.

1121

The bundle of envelopes produced and referred to by the witness in his preceding answers are offered in evidence, being 144 in number, and the same are marked "Complainant's St. Paul Envelope Exhibit."

5 Q. I now show you a newspaper or portion of a newspaper and ask you to examine the same, and if you know, state what it is? A. It is a portion of a Russian newspaper sent to us by the J. Block Company of Moscow. The title, as translated by them is the *Russian News*, and the date May 30, 1899.

6 Q. Who are J. Block & Co.; that is to say,
1122 what relation, if any, do they sustain to Wyckoff, Seamans & Benedict? A. They are general dealers for the sale of our goods in the Russian Empire; I mean for goods of Wyckoff, Seamans & Benedict.

7 Q. Do you find an advertisement in said Russian newspaper of any typewriting machine, and if so, is your knowledge of the Russian language sufficient that you can say what machine is referred to in said advertisement?

Counsel for defendant objects to this and all other questions relating to the alleged Russian newspaper and gives notice that he will move

to strike out all testimony in respect thereto 1123
and for the following reasons: The testimony called for is immaterial, irrelevant and incompetent, the alleged Russian newspaper has not been properly proven, and it has not been and cannot be proven that any advertisement contained in said paper, or other matter therein contained, was published under the authority, or by the direction, or with the consent of the defendant in this cause, or of the Remington-Sholes Company, or its predecessors, or by any one having authority to act in such regard in behalf of said parties.

A. I find specially marked therein an advertise- 1124
ment which from the cut of the Remington-Sholes typewriter and from one word which I recognize, though having no knowledge of the Russian language, I infer is an advertisement of the Remington-Sholes machine.

8 Q. I now show you some cuts of another typewriting machine and ask you to examine the same, and if you know state what they are? A. They are proofs of advertisements of the Remington Standard typewriter.

The question and answer are objected to as immaterial and irrelevant and incompetent.

9 Q. Will you please state, if you know, to what 1125
extent, in what language or languages and for how long a period advertisements like those which you hold in your hand, which you say contain cuts of the Remington Standard typewriter, have been published by Wyckoff, Seamans & Benedict, or by their agents, dealers, or representatives?

Same objection.

A. The English version of the advertisement, of which, I hold a proof in my hand reading, "The acme of Typewriter construction is attained in The Standard Remington Typewriter," is one which I

1126 prepared some two or more years ago and which has been extensively used in many publications by Wyckoff, Seamans & Benedict and by their dealers and other representatives. The French version of the same advertisement, of which, I also hold a proof in my hand, reading, "la perfection dans la construction des machines a ecrire est atteinte avec la Machine a Ecrire Remington," was lately prepared from the same design and has been used extensively by the branch of Wyckoff, Seamans & Benedict, located in Paris, both as an advertisement and as a circular for advertising the typewriter manufactured by the complainant.

10 Q. Prior to the adoption and use of the cut and
1127 advertisement of Wyckoff, Seamans & Benedict, referred to in your last answer, had you ever known of any other typewriter concern using a cut and advertisement like the one adopted and used by Wyckoff, Seamans & Benedict, and its agents and representatives?

Same objection.

A. I had not. The design is wholly original, so far as my knowledge goes, with Wyckoff, Seamans & Benedict.

The cuts of the machine of Wyckoff, Seamans & Benedict, and the printed matter contained thereon and appearing in connection
1128 therewith are offered in evidence and marked "Complainant's Exhibit Wyckoff, Seamans & Benedict Advertisements Nos. 1 and 2."

Defendant's counsel objects to the introduction in evidence of the exhibit as immaterial, irrelevant and incompetent.

Complainant's counsel also requests the Examiner to mark said Russian newspaper for identification as "Complainant's Exhibit Remington-Sholes Machine, Russian Advertisement."

Defendant's counsel objects to the marking of the newspaper in question as an exhibit, since it

has not been introduced in evidence and its in- 1129
troduction will be most strenuously objected to when offered, for the reasons given with respect to question 7.

11 Q. I hand you what purports to be a newspaper and ask you to examine the same and, if you know, state what it is and where said newspaper was published and is circulated? A. I find it to be a copy of the daily newspaper, *La Presse*, dated the 29th of June, 1899; said paper is published in the city of Montreal, Canada, in the French language.

Counsel for defendant objects to and moves to strike out the last question and answer, and all questions and answers with respect to the news- 1130
paper mentioned in the last question for the reason that said paper has not been properly proven, and for the further reason that it has not and cannot be proven that any statements or advertisement appearing in said newspaper are relevant or material to the issues in this cause, or were made by authority or with the sanction of the defendant, or the Remington-Sholes Company or its predecessors, or of any one else having power to act for them in such respect.

12 Q. State, if you know, where said newspaper is circulated?

Same objection. 1131

A. It circulates in the City of Montreal, in the Province of Quebec, and generally throughout Canada, and I believe to some extent in certain parts of the New England States.

13 Q. If you know, state whether or not there is a French-speaking class of people in Canada and other localities where said paper is circulated?

Same objection.

A. The French language is commonly used by a large part of the population in that part of Canada in which this paper chiefly circulates.

1132 14 Q. Have you examined said newspaper, and if so, do you find any article therein relating to an exhibition of a typewriting machine before the Montreal Business College in which Mr. Charles H. McGurrin and Mr. Franklin Remington are represented as being present?

Same objection.

A. I find an account of such a meeting in said exhibit.

15 Q. Is your knowledge of the French language such that you are able to say that said article relates to the exhibition of a typewriting machine by one Charles H. McGurrin at which Mr. Franklin
1133 Remington is represented as being present?

Same objection.

A. My knowledge of the French language is sufficient to enable me to state that the article referred to does relate to such meeting.

16 Q. Do you know who Mr. Charles H. McGurrin is; that is to say, have you any acquaintance with him or any knowledge as to his being connected, in any way, with the Remington-Sholes typewriter, and if so, state what you know on that subject?

Same objection.

A. I have some slight acquaintance with Mr. Mc-
1134 Gurrin, and it is generally understood in the trade that he represents the interests of the Remington-Sholes Company in and about his place of residence at Kalamazoo, Michigan, and that he undertakes such exhibitions in other places for the Remington-Sholes Company for compensation.

17 Q. If you know, state whether or not McGurrin is an expert typewriter operator, and also whether he at any time has been connected with Wyckoff, Seamans & Benedict or with the so-called Remington typewriter?

Same objection.

A. He is an expert typewriter operator and he 1135
has been employed in times past by Wyckoff, Seamans & Benedict, or their representatives, for the purpose of giving exhibitions of rapid writing.

18 Q. Was Charles H. McGurrin in the service of Wyckoff, Seamans & Benedict at the time of this alleged exhibition at Montreal in June, 1899?

Same objection.

A. He was not.

19 Q. Do you know or have you ever seen Mr. Franklin Remington, who is connected with the Remington-Sholes Company? A. I do not know him. I have not to my knowledge ever seen him.

20 Q. Do you know whether or not there is a Mr. 1136
Franklin Remington connected with the Remington-Sholes Company, who is advertised in the advertising media of the Remington-Sholes Company as being the manager thereof? A. I understand that Mr. Franklin Remington is the general manager of the Remington-Sholes Company. I have seen his name appear as such in the literature of the Remington-Sholes Company.

21 Q. I show you a newspaper purporting to be the *St. Joseph Sunday Herald* of date April 30, 1899, and ask you to examine said newspaper and state, if you know, whether there is such a newspaper published and circulated and was so published and circulated at the date mentioned, to wit, April 1137
30, 1899?

Counsel for defendant makes the same objection to this question and to all other questions and answers relative to the newspaper shown witness as has been made to questions 7 and 11 of this deposition.

A. I find said paper to be a copy of the Sunday issue of the St. Joseph, Missouri, *Herald*, a well known paper published at that place and circulated there and in the neighborhood.

22 Q. I ask you to examine the first page of said

1138 newspaper, and to state whether or not you find thereon what purports to be an advertisement of the Rem-Sho or Remington-Sholes Standard Typewriter?

Same objection.

A. I find prominently displayed on the first page of said paper an advertisement as described in the question.

The St. Joseph Sunday *Herald* which has been shown to the witness and identified and referred to by him is marked for identification "St. Joseph Sunday *Herald*, April 30, 1899."

1139

23 Q. I show you another copy of the St. Joseph daily *Herald* dated Tuesday, April 25, 1899, and ask you to state what you know about said copy, and whether it contains any advertisement of Wyckoff, Seamans & Benedict, and if so on what page? A. I find said paper to be a copy of the daily issue of the *St. Joseph Herald* of date mentioned, and find, on page 2 of said issue, an advertisement of the typewriter manufactured by Wyckoff, Seamans & Benedict.

The newspaper examined by the witness and referred to by him in his last answer, being the *St. Joseph Herald*, Tuesday, April 25, 1899, is
1140 offered in evidence and marked "Complainant's Exhibit St. Joseph Daily *Herald*, Tuesday, April 25th, 1899."

24 Q. I now hand you copies of newspapers and ask you to examine the same and state what they are and where they are published and circulated?

Same objection as made in connection with questions 7 and 11 of this deposition.

A. I find said newspapers to be, first, a copy of the *Austin Daily Statesman*, dated March 12, 1899, a paper published in Austin, Texas, and circulated

in that city and vicinity, and to some extent throughout the State of Texas; second, a copy of the *Austin Daily Tribune*, a newspaper published in the City of Austin, Texas, and circulated in that city and vicinity and throughout the State of Texas. 1141

25 Q. Do you know whether the typewriting machines of Wyckoff, Seamans & Benedict are offered for sale or sold at Austin, Texas? A. They are sold in Austin, Texas, and quite a number of them are constantly in service there.

The two newspapers, to wit, the *Austin Daily Tribune*, Saturday, March 11, 1899, and the *Austin Daily Statesman* of Sunday, March 12, 1899, are offered in evidence and are marked respectively "Complainant's Exhibit Austin Daily Tribune, March 11th, 1899," and "Complainant's Exhibit Austin Daily Statesman, Sunday, March 12th, 1899." 1142

The introduction of the newspapers in evidence is objected to by counsel for defendant for the reasons given in connection with questions 7 and 11 of this deposition.

RECESS.

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26 Q. I show you what purports to be a German publication published at Hamburg, December 15, 1898, and ask you to examine the same and state what, if anything, you know about said publication? 1143

Counsel for defendant makes the same objection and gives notice of the same motion with respect to the paper inquired of, and all interrogatories concerning the same as were made with respect to the matter of questions and answers 7 and 11 of this deposition.

A. The publication referred to in the question appears to be a copy of a monthly writing machine

1144 *Times* published in Hamburg, Germany, in the German language.

27 Q. Do you find any advertisements on page 59 relating to typewriting machines?

Same objection.

A. There appears on page 59 a list of typewriting machines and an advertisement of which the Remington and Remington-Sholes both appear.

28 Q. Have you seen said publication before it was shown you to-day.

Same objection.

A. I believe, I have.

1145 29 Q. Do you find any advertisement of the Remington-Sholes Company or its machine on any other page than page 59 already referred to?

Same objection.

A. I find on page 61 of said publication an advertisement of the Remington-Sholes Company under two separate titles.

30 Q. Are you sufficiently acquainted with the German language to enable you to say that said advertisements in said publication relate to the Remington-Sholes machine and the Remington-Sholes Company?

Same objection.

1146

A. My knowledge of the German language, though slight, is sufficient to enable me to identify the notice on page 59 as referring to the Remington-Sholes machine and the notices on page 61 as referring to the Remington-Sholes Company.

The publication entitled *Schreibmaschinen-Zeitung* of December 15, 1898, is marked for identification "*Schreibmaschinen Zeitung*, December 15, 1898."

31 Q. I call your attention to two other German publications and ask you to examine the same and

say what they are and where they are published, if you know? 1147

Counsel for defendant makes the same objection and gives notice of the same motion with respect to the papers inquired of and all interrogatories concerning the same as were made with respect to the matter of questions and answers 7 and 11 of this deposition.

A. One of the publications referred to in the question appears to be a copy of the *General-Anzeiger*, published in the city of Stettin, Prussia, dated the 29th of November, 1898. The other appears to be a portion of the issue of the *Hannover-Anzeiger*, dated the 6th of November, 1898, published in the City of Hannover, Germany. 1148

The publications which have been shown to and identified by the witness are marked for identification and designated as "General-Anzeiger, November 29, 1898," and "Hannover-Anzeiger, November 6, 1898."

32 Q. Please state whether you find in said publications any advertisements of the Remington-Sholes Company or the so-called Remington-Sholes or Rem-Sho machine?

Same objection.

A. I find in the *General-Anzeiger*, a large display advertisement of the Remington-Sholes writing machine, apparently inserted by the Remington-Sholes Company over their respective addresses in Germany, especially mentioning their branch in Stettin. I find in the *Hannover-Anzeiger* a prominent display advertisement of the Remington-Sholes No. 3 writing machine. 1149

33 Q. If you know, state whether or not the typewriting machines manufactured and sold by Wyckoff, Seamans & Benedict are sold in Germany?

Same objection.

1150 A. They are sold very largely in all parts of Germany.

34 Q. I now show you what purports to be an extract from a Russian publication, and ask you to look at the same and state what you know about it, if anything?

Same objection.

A. The clipping referred to in the question was sent to Wyckoff, Seamans & Benedict by the J. Block Company, their representatives for the Russian Empire, to illustrate the manner in which the Remington-Sholes machine was advertised throughout their territory.

1151 35 Q. Are you able to say what the date of said clipping purports to be?

Same objection.

A. I can only state of my own knowledge it was published in 1898 and on the 9th or 20th day of the month, according as the old or new style calendar is referred to.

The clipping referred to by the witness is marked for identification and designated "Block Clipping, July 9/20, 1898."

36 Q. Do you know whether the machines manufactured by Wyckoff, Seamans & Benedict are ad-
1152 vertised for sale and sold in the Russian Empire? A. They are extensively advertised and very largely sold throughout the entire Russian Empire.

Cross-examination waived.

(Signed) R. McKean Jones.

ELOISE VEITELLE, a witness called on behalf of 1153
the complainant, having been first duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, residence and occupation? A. Eloise Veitelle; Van Cortlandt, N. Y.; occupation, stenographer and translator; lawful age.

2 Q. In whose service are you now engaged as stenographer and translator? A. Wyckoff, Seamans & Benedict, 327 Broadway, New York City.

3 Q. Are you familiar with the French language, and what opportunities, if any, have you had for the purpose of acquiring a knowledge of the French 1154
language? A. I have spoken it in my home and have also studied it in New York.

4 Q. I show you a copy of a newspaper called the *La Presse*, Montreal, 29th June, 1899, and call your attention particularly to an article therein headed, as I understand, "Marvelous. A typewriter who writes 200 words a minute," and ask you if you have read, examined and translated said article in said newspaper?

Counsel for defendant objects to this and all other questions that may be asked the witness relative to the newspaper in question, or to the contents thereof, and gives notice that he will move to strike from the record all testimony 1155
that may be given with respect thereto for the following reasons: The testimony called for is immaterial, irrelevant and incompetent, the paper in question has not been properly proven and it has not been and cannot be proven that any matter therein contained was published under the authority or with the consent or sanction of the defendant in this cause or of the Remington-Sholes Company or its predecessors, or of any one having authority to act for them in such regard.

1156 A. I have.

5 Q. Have you made a correct translation of said article.

Same objection.

A. I have.

6 Q. Have you such translation here in court with you?

Same objection.

A. I have.

7 Q. Will you produce it?

Same objection.

1157 A. Yes; here it is.

8 Q. Is this translation which you produce attached to a copy of the newspaper *La Presse* of June 29, 1899, which you now produce, correct?

Same objection.

A. It is.

The newspaper and translation produced by the witness, a duplicate copy of which has already been marked in this case, is offered in evidence and the translation accompanying the same and said newspaper and translation of the article headed "Marvellous, etc.," and marked "Complainant's Exhibit *La Press*, June 29,
1158 1899."

Counsel for defendant objects to the introduction of the exhibit in evidence, the grounds of his objection being the same as stated in connection with question 4 of this deposition.

Cross-examination waived.

(Signed.) ELOISE VEITELLE.

A. ROGERS LEE, a witness called on behalf of com- 1159
plainant, having been first duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. A. Rogers Lee; residence, 122 Amity street, Brooklyn, N. Y.; age, twenty-nine; occupation, managing clerk for Vennette F. Pelletreau, real estate.

2 Q. I show you a letter in typewriting on the letterhead of Vennette F. Pelletreau, dated November 4, 1898, and ask you to examine the same and say whether or not the signature to that letter is in 1160
your genuine handwriting? A. Yes, sir.

3 Q. Did you dictate said letter to the stenographer or typewriter who wrote it before you signed it? A. Yes, sir.

4 Q. At the time you wrote this letter and signed it was a Remington-Sholes machine, so-called, in use in the office of Mr. Pelletreau? A. Yes, sir.

5 Q. At the time you wrote this letter was it a fact that the machine was out of order as regards the type or in some other respect? A. Yes, sir.

6 Q. Why did you address this letter to Wyckoff, Seamans & Benedict? A. I thought they were proprietors of that typewriting concern.

7 Q. You believed then, did you, that Wyckoff, 1161
Seamans & Benedict were the makers and vendors of the said so-called Remington-Sholes machine? A. Yes, sir.

8 Q. And by reason of that fact you addressed this letter to Wyckoff, Seamans & Benedict? A. Yes, sir.

The letter, which has been produced and identified by the witness, is offered in evidence and marked "Complainant's Exhibit A. Rogers Lee Letter, Nov. 4, 1898."

1162 CROSS-EXAMINATION by Mr. Fisher:

9 x-Q. About how many typewriting machines were in use in the office of Mr. Pelletreau on November 4, 1898? A. One.

10 x-Q. Did you use that machine yourself? A. No, sir.

11 x-Q. Did you ever examine the machine to see what name or address was given thereon? A. No, sir. I knew that it was a Rem-Sho machine, that's all.

12 x-Q. Were you familiar with the Remington Standard typewriter? A. We had one before they got this Rem-Sho. I believe we made a trade for
1163 this and some cash; that is my impression.

13 x-Q. Do you not recall that the address Chicago was on the Rem-Sho machine that you had in your office? A. No, sir.

14 x-Q. You have never examined the machine for the purpose of ascertaining the name of the manufacturers or the address, have you? A. No, sir.

15 x-Q. Did you purchase the machine? A. No, sir.

16 x-Q. Did you have anything to do with the purchase of the Rem-Sho machine? A. No, sir.

17 x-Q. How did you happen to write the letter that has been offered in evidence? A. Why, the typewriter complained of the types being worn when I spoke to her saying the type looked blurred,
1164 and asked her to clean it. I told her it was a comparatively new typewriter and that I would write a letter to the people and have them come over and examine it.

18 x-Q. Did you know at that time that the Remington Standard machine was manufactured by Wyckoff, Seamans & Benedict at Ilion, N. Y.? A. No, sir. I had passed their placed up here on Broadway and presumed that they were the makers of the typewriter we had.

19 x-Q. Why did you presume this? A. I don't know why I did, but I did.

20 x-Q. No one had ever told you so? A. No, sir.

21 x-Q. In fact, you had never had any conversation with any one, I suppose, about this Rem-Sho machine? A. Not until after that letter was written. 1165

REDIRECT-EXAMINATION by Mr, Donnelly:

22 RD-Q. At the time you wrote this letter, you knew that Wyckoff, Seamans & Benedict were the manufacturers and sellers of the so-called Remington typewriter, did you not? A. I presumed that they were; I did't know that fact.

23 RD-Q. And the name "Remington" and the name "Remington-Sholes" probably had something to do with your addressing the letter to Wyckoff, Seamans & Benedict; is not such the fact? 1166

Question objected to as leading.

A. I presume that it did.

RECROSS-EXAMINATION:

24 Re-x-Q. Had you had occasion to correspond with Wyckoff, Seamans & Benedict in regard to the Remington standard typewriter that was used in your office prior to the time that you got the Rem-Sho machine? A. Not to my recollection.

(Signed) A. ROGERS LEE.

ZALMON G. SHOLES, a witness called on behalf of the complainant, having been duly sworn, testified as follows: 1167

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. Zalmon G. Sholes; residence, Evanston, Illinois; age, thirty-four; occupation, inventor.

2 Q. About how long have you been engaged in your occupation as an inventor? A. Since 1890, as near as I can remember.

3 Q. Have you at any time made any inventions or improvements relating to typewriting machines? A. Yes, I have; quite a number.

1168 4 Q. When and what was the first typewriting machine which you invented, and about when was the same embodied in a model or operative form? A. In 1892, as near as I can remember. I made a machine at that time which I called the Z. G. Sholes Typewriter; it was a working model.

5 Q. About when was said model completed, and where is said model, if you know? A. The first model I built of that machine was built in 1892, was finished in that year and destroyed by fire. That is as near as I can remember.

6 Q. Please briefly describe the general construction and mode of operation of said model? A. Well, the machine was known as the basket
1169 shift, was constructed with a rigid carriage and what I termed a tip-up platen. The basket was shifted to bring capitals in place instead of shifting the carriage as in other well known machines. It had the universal keyboard, two type on one shank.

7 Q. Did you afterwards build any other model of typewriting machine like the one which was burned and which you have described, and if so, state when you constructed said machine? A. Well, I think I reconstructed the machine on the same general lines in the winter of 1892.

8 Q. What became of the machine which you constructed in the winter of 1892? A. The machine, I built after the fire, I believe is still in existence.

1170 9 Q. If you know where said machine is or where you last saw it, will you kindly state? A. I last saw it in Peirce & Fisher's office, 115 Monroe street, Chicago, Ill.

10 Q. When was the last time that you saw said machine in Peirce & Fisher's office in Chicago, Ill? A. I don't think I have seen that machine since 1896.

11 Q. Have you ever seen any photographs or had any photographs taken of the machine which you say was constructed in the winter of 1892, and which you say you last saw in the office of Messrs. Peirce & Fisher in Chicago, Illinois? A. Yes.

12 Q. I produce and show you what purports to 1171
be a photograph of a typewriting machine and ask you to examine the same and say what you know about said photograph, and of what typewriting machine it is a photograph? A. That is the machine I built in 1892. I caused the photograph to be taken. I forget the name of the man who took it. That is my writing on top, the name "Remington-Sholes."

13 Q. Have you any means of fixing the date, or can you fix the date, approximately, when said photograph was taken? A. I am afraid I can't. My recollection of that photograph is that it was by an amateur, a friend of mine came in and took it for me. I guess I can place it. It was taken in what is known as the Lind block, on the corner of Ran- 1172
dolph and Market streets, Chicago. It was taken along in March or April, 1893. That's my recollection.

14 Q. Was said photograph taken before the words Remington-Sholes were written on the card upon which the photograph is mounted? A. Yes.

15 Q. After you built your first model which you have described, what, if anything, did you do with said model in the way of patenting any features therein, or in the way of taking steps to sell your interests in the improvements in said model, or in the way of making preparation to manufacture machines like said model, if you did take any steps toward the manufacture of the same? 1173
A. The first model I interested a man from Detroit, a man by the name of Smith and Smith's mother in law, Mrs. Mulliken, and after Smith and Mulliken, interested Camp & Wadhams of Milwaukee; after Camp & Wadhams I interested the Remington boys, Mr. Carver and Mr. Franklin Remington. In regard to the patents, I had applications for different features of the machine, I think as far back as 1890 or 1891.

16 Q. When did Smith and Mrs. Mulliken first become interested in your first model machine, which was afterwards burned? A. About the year 1892.

1174 17 Q. At that time by what name, if any, was the said model called or designated? A. It was known as the Z. G. Sholes typewriter.

18 Q. What were the respective interests of Smith and Mrs. Mulliken and yourself in said model known as the Z. G. Sholes typewriter and in the inventions and improvements made by you that were embodied therein?

Question objected to as immaterial and irrelevant and as calling for secondary evidence.

A. Smith and Mulliken, if I remember rightly, owned a three-quarter interest.

19 Q. And by whom, if by any one, was the other
1175 one-quarter interest owned? A. I owned the other quarter interest.

20 Q. Have you any papers or written documents showing the respective interests of Smith, Mulliken and yourself in the Z. G. Sholes typewriter and inventions and improvements embodied therein? A. I believe there are some papers among my papers relating to the interests and transactions.

Adjourned to Thursday, July 20, 1899, at 10 A. M.

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NEW YORK, July 20, 1899, 10 A. M.

1176 Met pursuant to adjournment.
Present—Counsel as before.

DIRECT-EXAMINATION of ZALMON G. SHOLES cotinued.

21 Q. I show you a paper writing and ask you to examine the same and to say whose signature it is which is subscribed to said writing? A. It is my signature.

22 Q. Is this writing one that was executed by you to the party therein named? A. Yes, it was.

23 Q. Was it executed at or about the time it bears date? A. Yes.

The paper writing which has been shown the witness, being an assignment of an equal undivided one-third interest of an application for Letters Patent of the United States executed by Zalmon G. Sholes to Emma A. Mulliken on the 16th day of December, 1892, is offered in evidence and marked "Complainant's Exhibit Sholes-Mulliken Assignment." 1177

Counsel for defendant objects to the introduction of the exhibit in evidence as it has no bearing whatever upon the matters at issue in this cause.

24 Q. I show you another paper writing purporting to be an assignment of an interest in certain applications for United States Letters Patent executed by you to one George E. Smith, of the City of Chicago. Please examine said paper writing and tell the Court whose signature it is that is subscribed thereto? 1178

Defendant's counsel objects to this question and to all questions relating to the alleged assignment referred to as immaterial and irrelevant.

A. It is my signature.

25 Q. Was said paper writing executed by you on or about the date affixed thereto?

Same objection. 1179

A. It was.

The paper writing which has been shown the witness, identified and proven by him, is offered in evidence and marked "Complainant's Exhibit Sholes-Smith Assignment, February 17, 1893."

The introduction of the exhibit in evidence is objected to by defendant's counsel, as it is immaterial and irrelevant, so far as the issues of this case are concerned.

1180 26 Q. Are these the only assignments or conveyances which were made by you of interests in your inventions or applications for Letters Patent to Mrs. Mulliken or to Smith?

Objected to as immaterial, irrelevant and incompetent.

A. So far as I remember now.

27 Q. When did Wadhams & Camp, or either of them, become interested in your model or your typewriter invention?

Same objection.

A. I believe in the year 1893.

1181 28 Q. Will you examine these papers, which I now hand you, and see if you can fix the date more definitely than you have already done?

Same objection.

A. 1893.

29 Q. Was it before or after Carver Remington and Franklin Remington became interested in your model machine and invention?

Same objection.

A. It was before.

30 Q. State whether or not any assignment in writing was made by you and by Mulliken and
1182 Smith to any one, and if so, state when and to whom, if you remember?

Same objection.

A. We made an assignment to Camp & Wadhams.

31 Q. Have you such assignment now in your possession or under your control?

Same objection.

A. I think I have a copy of it.

32 Q. Have you now the original assignment in your possession or under your control, and if not,

where is said original assignment, so far as you know? 1183

Same objection.

A. If I remember right, Mr. Camp has got that in Milwaukee.

33 Q. I now show you what purports to be a copy of said assignment and ask you to carefully examine the same and say whether or not it is a true copy of said assignment except as to the signatures to the original?

Same objection.

A. Yes, this is a copy.

34 Q. Is it a true copy of said assignment except the signatures of the parties are omitted? 1184

Same objection.

A. It is.

The copy of the assignment from Sholes, Mulliken and Smith to Wadhams, Camp, Smith and Sholes jointly, purporting to have been made the 8th day of April, 1893, is marked for identification, and designated "Complainant's Exhibit Sholes, Mullikan and Smith Assignment."

35 Q. Was any written assignment made between you and others on or about the date of said assignment, and, for the purpose of calling your attention directly to the matter, I show you a paper writing? 1185

Same objection.

A. There was.

36 Q. Between whom was said agreement made and on what date?

Same objection.

A. George E. Smith, Edward A. Wadhams, Thomas E. Camp and myself, April, 1893, the 8th day.

37 Q. Please examine said agreement and say

1186 whether or not you know the signatures of the persons subscribed thereto?

Same objection.

A. The signatures are all right. I know the signatures very well.

38 Q. Are the signatures subscribed to that agreement in the genuine handwriting of Zalmon G. Z. Scholes, George E. Smith, Edward A. Wadhams and Thomas E. Camp?

Same objection.

A. They are.

The agreement, which has been shown to the
1187 witness and identified and proven by him, is now offered in evidence and is marked "Complainant's Exhibit Sholes, Smith, Wadhams, Camp Agreement, Apl. 8, 1893."

Defendant's counsel objects to the introduction of the agreement in evidence, as it is immaterial and irrelevant.

39 Q. At the time said Sholes, Smith Wadhams and Camp agreement was made, to wit, April 8, 1893, had you completed your model typewriting machine, and was it a full sized operative machine?

Same objection.

A. Yes.

1188 40 Q. What was said machine called, if it had any name, at that time?

Same objection.

A. The Z. G. Sholes.

41 Q. Was the name Z. G. Sholes then upon said model?

Same objection.

A. If my memory serves me right, it was.

42 Q. After the agreement, or before the agreement of April 8, 1893, were any steps taken by you alone or in connection with other persons towards

the organization of a company for the purpose of manufacturing and selling typewriting machines like or similar to The Z. G. Sholes typewriter? 1189

Same objection.

A. Yes.

43 Q. What steps, if any, were taken, and by whom were they taken, and where were they taken, with a view to organizing a corporation for the manufacture and sale of The Z. G. Sholes machine, so called?

Same objection.

A. Smith and myself tried to organize a company in Racine, Wisconsin, through a man by the name of C. B. Freeman with the C. B. Freeman Manufacturing Company. We tried to form a company there and fell down. 1190

44 Q. Did you afterwards, in company with Camp or anybody else, organize a corporation under the laws of Wisconsin?

Same objection.

A. We did.

45 Q. What was the name of said corporation or company, if it had a name?

Same objection.

A. The Z. G. Sholes Company.

46 Q. About when was that company organized? 1191

Same objection.

A. The first day of May, 1893.

47 Q. What was the capitalization of said company?

Same objection.

A. Ten thousand dollars.

48 Q. Was the capital subsequently increased, and if so, to what amount?

Same objection.

1192 A. It was, to one hundred thousand dollars.

49 Q. I now show you what purports to be the Articles of Association of The Z. G. Sholes Company, which purport to have been received and recorded in the Register's office, Milwaukee, Wisconsin, on the eighth day of April, 1893, and ask you to examine the same and say whether you recognize the paper as an exemplified copy of the Articles of Association of said The Z. G. Sholes Company?

Same objection.

A. Yes, I recognize these as the Articles of Association of The Z. G. Sholes Company.

1193 The exemplified copy of the Articles of Association of The Z. G. Sholes Company filed in the Register's office at Milwaukee, Wisconsin, and recorded April 8, 1893, are offered in evidence and marked "Complainant's Exhibit Articles of Association of The Z. G. Sholes Company."

Defendant's counsel objects to the introduction in evidence of the proposed exhibit for the reason that it is immaterial and irrelevant.

50 Q. When was the capital stock of The Z. G. Sholes Company increased to one hundred thousand dollars

Same objection.

1194 A. May 1, 1893.

51 Q. After The Z. G. Sholes Company was organized and its stock increased to one hundred thousand dollars, was the stock issued, and if so, to whom?

Same objection.

A. I believe the stock was never issued.

52 Q. Who were the stockholders of this corporation or the subscribers of the stock?

Same objection.

A. If I remember right, Thomas E. Camp, E. A. Wadhams, George E. Smith and myself.

53 Q. For the purpose of refreshing your recollec- 1195
tion in regard to the issuance of stock of The Z. G. Sholes Company, I call your attention to a written document, and ask you to examine the same and see if your recollection is refreshed thereby as to the fact that the stock of The Z. G. Sholes Company and the capital stock thereof was issued to the subscribers?

Same objection.

A. I don't remember of any stock being issued.

54 Q. There was no difficulty in issuing the stock, if you desired to?

Same objection.

A. None whatever; we never got as far as that. 1196

55 Q. But you and the other corporators got so far as to organize a corporation under the laws of Wisconsin under the name of The Z. G. Sholes Company, did you not?

Same objection.

A. We did.

56 Q. What was the purpose of the organization of this company at the time the articles of association were filed on the 8th day of April, 1893?

Same objection.

A. To manufacture the Z. G. Sholes typewriter.

57 Q. And to sell the same? 1197

Same objection.

A. Yes.

58 Q. State, if you know, why the model machine which you had then completed, and which it was the purpose of the Z. G. Sholes Company to manufacture and sell, was called The Z. G. Sholes?

Same objection.

A. It was named after myself, because I invented and made the machine.

59 Q. State, if you know, why the corporate name

1198 which was selected was The Z. G. Sholes Company, and so designated in the articles of association filed on the 8th day of April, 1893?

Same objection.

A. If my recollection is right, at the meeting we discussed the best name for the corporation and selected my name as being the inventor of the machine.

60 Q. You have stated, as I understand, that the name Z. G. Sholes was on your model machine as it existed at or about the time of the incorporation of the Z. G. Sholes Company. Will you kindly state whether or not the name or designation "The Z. G.
1199 Sholes" was painted on the framework of the machine, and if so, on what part thereof?

Same objection.

A. It was, on the top plate.

61 Q. What part of the top plate?

Same objection.

A. On the front.

62 Q. In a conspicuous place so as to be readily observed by the eye of an observer?

Same objection.

A. Yes, sir.

1200 63 Q. Now after the formation of The Z. G. Sholes Company, you may state what became of those interests; what steps, if any, the corporators took toward entering upon the manufacture and sale of The Z. G. Sholes typewriter, and if for any reason any of the corporators severed their connection with the company, you may state why, if you know?

Same objection.

A. I do. After the company was formed, we bought machinery with which to manufacture tools to build the machine, and put the machinery in the Lind block, corner of Market and Randolph streets,

Chicago. After starting on the tools, running along 1201
for a month or so, the bank failures occurred in Milwaukee and then Camp and Wadhams decided not to go ahead with the undertaking, as they feared they couldn't raise the required amount of money owing to the panic then existing.

64 Q. Please state what, if anything, was then done with the interests of Camp and Wadhams in said The Z. G. Sholes Company and in the inventions and improvements embodied in The Z. G. Sholes typewriting machine?

Same objection.

A. After Camp and Wadhams gave up I brought the matter before Mr. Carver Remington. 1202

65 Q. You may state what occurred or what negotiations occurred and through whom before the matter was brought to Mr. Carver Remington?

Same objection.

A. I was introduced to Mr. Carver Remington by C. M. Dally, of New York.

66 Q. Well, before you were introduced by Mr. Dally to Mr. Carver Remington what, if anything, had Dally done in the way of negotiating or attempting to negotiate for the sale of these interests or the manufacture of The Z. G. Sholes typewriter?

Same objection. 1203

A. Mr. Dally tried to interest the Hartly & Graham Company, who represented the Remington Arms Company of Ilion, New York. However, nothing was done there.

67 Q. Why, as you understand, was nothing done by Hartley & Graham or the Remington Arms Company?

Same objection.

A. The reason they gave me was owing to the condition of the money market, they didn't care to take up any new enterprise.

1204 68 Q. Well, Dally, then, brought you into contact with Carver Remington, as I understand; is such the fact? A. Yes, sir.

69 Q. You may state briefly what Dally did in that regard and what transaction occurred between you and the other persons interested in The Z. G. Sholes Company as regards The Z. G. Sholes typewriter and the inventions embodied in said machine?

Same objection.

A. Mr. Dally wrote me a letter telling me to call on Mr. Carver Remington, and that perhaps he might be interested in what I had to offer. I called on Mr. Remington. He seemed to be interested in
1205 what I had to say; asked to see the machine. I took it to his office and showed it to him, and finally consummated a deal whereby he entered the enterprise?

70 Q. What business was Carver Remington engaged in at that time; state if you know?

Same objection.

A. I believe he was in the contracting business.

71 Q. Where?

Same objection.

A. In the City of Chicago.

72 Q. Who, if anybody, was associated with him at that time in the contracting business in the City
1206 of Chicago?

Same objection.

A. So far as I know, his brother Franklin was interested with him.

73 Q. Is that the Mr. Franklin Remington who is now connected with the Remington-Sholes Company as its general manager?

Same objection.

A. Yes.

74 Q. Did Carver Remington or Franklin Remington, or both, acquire any interest in The Z. G. Sholes

typewriter, so-called, and in the inventions and improvements which had at that time been made by you, and if so, state if you know, of whom that interest was acquired? 1207

Same objection.

A. Yes. I believe they had a three-quarter interest between them. I believe they acquired their interest from George E. Smith and Emma A. Mullikin, Thomas E. Camp and E. A Wadhams.

75 Q. Will you please state when the Messrs. Remington acquired the interests of the persons referred to in your last answer in The Z. G. Sholes typewriter and the improvements and inventions which you had made and which were embodied therein? 1208

Same objection.

A. August, 1893.

76 Q. I now show you a written instrument, and ask you to examine the same and say whether you know the signatures subscribed to said written instrument, and if you do, state whether such signatures are in the genuine handwriting of the persons whose names are subscribed thereto?

Same objection.

A. I know the signatures, and know them to be the genuine signatures of the persons whose names are attached to this document. 1209

77 Q. This instrument, which appears to be typewritten, purports to have been made on the 26th day of August, 1893, between Carver Remington, Franklin Remington and yourself. Please say whether or not said instrument was made and executed on the day of its date?

Same objection.

A. It was.

The paper writing or agreement, which has been shown to and proven by the witness, is offered in evidence and is marked "Complain-

1210 ant's Exhibit Sholes-Remington Agreement, Aug. 26, 1893."

Same objection to the introduction of the exhibit.

78 Q. After the Messrs. Remington acquired these interests and became joint owners with you, what was done, if anything, with this model machine, The Z. G. Sholes typewriter and these interests in the way of exploiting them or negotiating the sale of them, &c.?

Same objection.

A. They attempted to interest capital in it for the
1211 purpose of manufacturing and selling the machine.

79 Q. Please state what, if anything, was done in the way of exploiting the machine or in attempting to sell these interests, by whom it was done and what was done in that regard?

Same objection.

A. The machine was exhibited to a great many people with a view to interesting them towards the manufacture of the machine. I cannot recall all their names.

80 Q. What, if anything, did Carver Remington with you, or with others, do in the way of attempting to dispose of this model machine and the inven-
1212 tions and improvements which you had made and which were embodied therein?

Same objection.

A. As far as Carver Remington was concerned, I do not remember that he had any deals on to sell the machine. I had been negotiating myself to sell the machine. Before I got up to it, any arrangements made, the Remington boys became interested in the enterprise with me.

81 Q. After the Remington boys became interested with you in this so-called enterprise, was any negotiation attempted, or sale attempted, to Mr. Seamans

or to anybody else; if so, state what you know on 1213
that subject?

Same objection.

A. Why, yes. As I said before, I had been corresponding with Mr. Seamans in regard to his buying the machine, and I think there was something like that on in a general way.

82 Q. Well tell us all about what was on, please, in that way?

Same objection.

A. Well, as I said before, I had been corresponding with Mr. Seamans in regard to the sale of the machine and I believe it was the general idea that he 1214
could buy the machine.

83 Q. After the Remington boys acquired this interest, did not Carver Remington or you or somebody come East with a view to negotiating with persons, in regard to the sale of these interests?

Same objection.

A. Yes.

84 Q. Now state when that was and what was done.

Same objection.

A. We came East, I believe, in the fall of 1893. We came down to Utica, New York, and attempted to interest capital there. However, we didn't suc- 1215
ceed. Then we came on East to New York City through Mr. Dally's invitation and he attempted to interest the Remington Arms Company to the extent of taking up the machine and manufacturing it and that fell through.

85 Q. Well, about that time did you or Carver Remington, either or both, endeavor to sell these interests to Mr. Seamans?

Same objection.

A. Why, yes, I did in a way. I had been corresponding with Mr. Seamans and received a letter

1216 from Mr. Seamans saying, as near as I remember, that he supposed now that I had made a business deal with the Remington boys that the negotiations with he and I were at an end. I gave the letter to Mr. Carver Remington, and under his direction wrote to Mr. Seamans asking him to meet me at some hotel—I forget the name—and talk the matter over. If my memory serves me rightly, I received no answer to the letter. The matter dropped there.

86 Q. All this occurred, did it, before the organization of what was afterwards known as the Remington-Sholes Company?

Same objection.

1217

A. Yes, sir.

87 Q. When was the so-called Remington-Sholes Typewriter Company organized? A. May, 1894, I believe.

88 Q. By whom was it organized and where? A. The incorporators were Leverett Thompson, Charles H. Hamill and Norman Hapgood. It was organized in the City of Chicago, Illinois.

89 Q. I show you what purports to be an exemplified copy of the Articles of Association or Incorporation of the Remington-Sholes Typewriter Company and ask you if you recognize the same as being a copy of the Articles of Association of said company? A. Yes, I do.

1218

Complainant's counsel now offers in evidence an exemplified copy of the Articles of Incorporation of the Remington-Sholes Typewriter Company, which purport to have been filed about the 7th day of May, 1894, and the same is marked "Complainant's Exhibit Exemplified Copy of Articles of Incorporation of Remington-Sholes Typewriter Company."

90 Q. Do you now remember what the capitalization was originally? A. Three hundred thousand dollars.

91 Q. How was said capital stock paid for, if it 1219
was paid for? A. One hundred and fifty thousand dollars, if I remember right, was given for the machine and patents pending.

92 Q. I notice in the articles of association that you were a subscriber to the extent of three hundred and seventy-four shares of the capital stock of said company. Please say how, if at all, you paid for those shares? A. With the interest I owned in the machine.

93 Q. I notice that Franklin Remington and Carver Remington are each subscribers, one being for five hundred and sixty-one shares and the other a subscriber for five hundred and sixty-two shares. Kindly state, if you know, how the shares of the 1220
Messrs. Remington were paid for? A. The same as myself.

94 Q. I also notice that Norman Hapgood, Charles H. Hamill and Leverett Thompson are each subscribers for one share. State, if you know, whether these persons paid for these shares of stock and how they payed for them, if at all? A. I cannot say.

95 Q. Do you know of your own knowledge that they ever paid anything for said shares of stock? A I do not.

96 Q. I notice that the entire subscription in the articles of association of the Remington-Sholes Typewriter Company appears to amount to one hundred 1221
and fifty thousand dollars. Was that the original capitalization and was it afterwards increased? A. I think it was originally incorporated for one hundred and fifty thousand dollars. I think it was afterwards increased; the precise amount I do not remember.

Recess.

97 Q. Was any one beside yourself and the other subscribers to the capital stock of the Remington-Sholes Typewriter Company interested in the organization of said company, and if so, please give their

1222 names? A. Yes there was. Franklin H. Head, Charles Norman Fay. No others that I now recall.

98 Q. Is that the Charles Norman Fay who is now connected with the Remington-Sholes Company? A. Yes.

99 Q. What did Mr. Charles Norman Fay have to do with the organization of the Remington-Sholes Typewriter Company? A. I believe he was the principal organizer.

100 Q. Did Mr. Fay look after the details and superintend and direct the organization of the Remington-Sholes Typewriter Company? A. He and his attorneys.

101 Q. Did Fay have the organization papers pre-
1223 pared through his attorneys; I mean the Articles of Incorporation of the Remington-Sholes Typewriter Company? A. I believe he did.

102 Q. What stock interest, if any, did Mr. Fay acquire in the Remington-Sholes Typewriter Company directly the company was organized?

Defendant's counsel objects to the question as immaterial and irrelevant, and without repetition it is to be understood that the same objection is made to any other questions that may be asked touching the same subject matter.

A. I have a recollection of turning over a part of my stock to him, a certain portion. If I remember
1224 right, I believe the others interested with me did the same thing.

103 Q. State, if you please, how much of the stock which you subscribed for and which was issued to you you transferred to Mr. C. Norman Fay? A. I can't remember exactly, but I think it was in the neighborhood of twelve thousand dollars.

104 Q. The shares were $100 shares? A. Yes, sir.

105 Q. What did you receive from Mr. Fay for the $12,000 or thereabouts of stock of the Remington-Sholes Typewriter Company which you trans-

ferred to him? A. I think I received his services in 1225
obtaining capital.

106 Q. Do you mean services as promotor of the company? A. As I remember it, of the $150,000 we received for the model, we turned back to Mr. Fay $50,000 in stock; just for what I can't say positively; it was an understanding we had between us; I mean that I had with the Remington boys.

107 Q. That is to say, as you remember, $50,000 worth of stock of the $150,000 which went to pay for the model machine and any of your improvements embodied therein, was transferred by the Messrs. Remington and yourself to Mr. Fay for services or for some reason connected with the organization of the Remington-Sholes Typewriter Company; is that 1226
your present recollection? A. It is.

108 Q. After the organization of the Remington-Sholes Typewriter Company, who became the president of said company and who were the directors thereof, and for the purpose of refreshing your recollection I show you the articles of association of the Remington-Sholes Typewriter Company? A. If my recollection is right, C. N. Fay was created president, I believe, at that meeting. The directors were Mr. Franklin Remington, Carver Remington, Mr. Fay, Mr. Head and myself.

109 Q. I find in the articles of association that the following named persons are stated to have been elected directors to serve until 1227
the next annual meeting to be held June 12, 1894: Charles N. Fay, Franklin H. Head, Charles S. Holt, William P. Sidley, Charles H. Hamill, Norman Hapgood and Leverett Thompson. Did these persons all of them act as directors, or were they put into the papers simply for the purpose of organization? A. Yes, they were simply put into the papers for organization.

110 Q. Aside from Messrs. Fay and Head did any of them ever act as directors, to your knowledge? A. No.

111 Q. After the organization of the Remington-

Sholes Typewriter Company what, if anything, was done in the way of building a typewriting machine on the lines of your model by the Remington-Sholes Typewriter Company? A. We went ahead and purchased machinery with which to build the tools to turn out the machines which we eventually brought out ready for sale.

112 Q. When did the machine which was manufactured by the Remington-Sholes Typewriter Company first get into the market; that is to say, when were they first sold upon the market by said company? A. I think in December, 1894.

113 Q. How long did the Remington-Sholes Typewriter Company continue to manufacture typewriting machines, and if it ceased to manufacture, when did that event occur? A. Up to December, 1896; about December, 1896.

114 Q. What, if anything, to your knowledge became of the business of the Remington-Sholes Typewriter Company about December, 1896? A. Well, it was sold at public auction to C. N. Fay.

115 Q. Is that the same C. N. Fay who was the promoter and president of the Remington-Sholes Typewriter Company? A. Yes.

116 Q. And what, if you know, became of the business after it passed into Fay's hands? A. I believe he carried it on, manufactured machines the same as before the sale.

117 Q. What became of the business after it passed into Fay's hands; did he continue to carry on the business for any great length of time or did he organize another company as you understand? A. As I understand, he carried the business on for several months, then reorganized.

118 Q. Did you have anything to do with the business of the reorganized company or with that of C. N. Fay? A. No, I did not; any more than that I worked for C. N. Fay under a salary.

119 Q. Did you have anything to do with the reorganized company, that is to say, the Remington-Sholes company? A. No, sir; I did not.

120 Q. What became of your interest as stock- 1231
holder in the Remington Sholes Typewriter Company? A. Well, what interests I had left were wiped out by the sale of the company to C. N. Fay.

121 Q. What became of the interests of the Messrs. Remington, if you know, in the Remington-Sholes Typewriter Company? A. As near as I know, they went the same way as mine.

122 Q. About when did you cease to have any connection, as inventor or otherwise, with the machine which was manufactured by the Remington-Sholes Typewriter Company? A. May, 1897.

123 Q. Up to the time when you ceased to be connected with the machine manufactured by the Remington-Sholes Typewriter Company and afterwards 1232
by C. N. Fay, whose inventions or improvements did said machine embody, in so far as it contained any novel or patented improvements? A. It embodied ideas which I had created, also some improvements in detail Mr. Fay made.

124 Q. Up to the time when the Remington-Sholes Typewriter Company was organized and when that company first began to manufacture typewriting machines, whose ideas and inventions did said machine embody? A. Mine, outside of one patent, and that was a patent on a type-bar granted to Leslie B. Harkness.

125 Q. After the Remington-Sholes Typewriter Company was formed, and when it put its first ma- 1233
chines on the market, did said machines embody substantially the features of construction and the mode of operation of your model machine, The Z. G. Sholes Typewriter? A. Yes, with the exception of a few details that I changed in getting the machine ready for the market.

126 Q. At the time the Remington-Sholes Typewriter Company was incorporated, state, if you know, who selected the corporate name? A. Well, as near as I can remember it, I think Mr. Fay had the handling of that.

127 Q. In so far as you remember, did either of

1234 the Messrs. Remington invent any improvements in typewriting machines, or make any, which were embodied in typewriting machines during the time that they were connected with your model or with the Remington-Sholes Typewriter Company? A. Not to my knowledge.

128 Q. Had Mr. Franklin Remington, to your knowledge, ever been connected with the typewriter business prior to the time when he became interested in your model machine? A. So far as I know, I believe not.

129 Q. What was his business, as you understand, at the time he became interested in your model machine? A. Contracting business.

1235 130 Q. In your last answer you say that Mr. Franklin Remington, as you understand, was engaged in the contracting business. Will you state a little more definitely what the character of the contracting business in which Mr. Remington was then engaged? A. I believe he was excavating on what is known as the drainage canals.

131 Q. What connection, if any, did Mr. Carver Remington have with the business of the Remington-Sholes Typewriter Company; was he an employee of any kind? A. He was not a salaried man, but he was a director and a stockholder.

132 Q. Did Mr. Carver Remington, to your knowledge, ever have anything to do with the so called

1236 Remington-Sholes Company? A. Not to my knowledge.

133 Q. What was Carver Remington's business at the time he became interested in your model machine? A. He was in the contracting business.

134 Q. Was he associated, as you understood, with his brother Franklin? A. Yes.

135 Q. State, if you know, how much money the Messrs. Remington paid for the interests which they purchased at the time they acquired an interest in your model machine and the inventions therein? A. I think the interest cost them in the neighborhood of $8,000 or $9,000.

136 Q. And this went to the owners of the interest 1237
which they purchased and which purchase represented a three-quarter interest in the model, and the inventions and improvements embodied therein; is that correct? A. Yes, that is right.

137 Q. And about how much money did the Messrs. Remington put into the business connected with this model and improvements, up to the time when the Remington-Sholes Typewriter Company was organized? A. In the neighborhood of fifteen thousand dollars.

138 Q. And aside from that which they invested at first in the purchase of the three-quarters interest in the model and inventions, &c., what was the balance of the money making up the $15,000 expended 1238
for? A. To keep myself, a man we had on a salary, some changes we had made in the model, traveling expenses, shop rent, attorney's fees, &c.

139 Q. You speak of having expended money in traveling fees. What traveling fees do you refer to; please state? A. Well, we traveled in the interest of promoting the machine.

140 Q. Please state just what you mean by promoting the machine? A. Endeavoring to interest capital for the purpose of manufacturing the machine.

141 Q. At the time you and the Messrs. Remington came together, what understanding did you have as to your interests in the model machine, if any? 1239
A. We had a paper between us setting forth our individual interests.

142 Q. Is that the only paper you ever had between you; I mean the only written document? A. Yes; it was a sort of partnership agreement. We had an understanding between ourselves that neither one of us should dispose of our interest without the consent of the others. There were certain conditions under which we could sell.

143 Q. Then as I understand you, you were joint owners of the model and inventions and had certain

1240 arrangements between you as to the sale or non-sale of the model and inventions; is that correct?

Question objected to as immaterial, irrelevant and incompetent.

A. Yes, sir; it is.

144 Q. At the time Mr. Carver Remington acquired his interest in The Z. G. Sholes model and improvements therein, did he, to your knowledge, have any idea of engaging in the typewriter business other than for speculative purposes? A. Well, I think he went into the machine for speculative purposes.

145 Q. What do you think was the object or pur-
1241 pose of Mr. Carver Remington's visiting Ilion, after he acquired his interest in The Z. G. Sholes model machine?

Question objected to as immaterial and irrelevant and as calling for the mere opinion of the witness, and the question is further objected to as misleading, since the witness has not testified that Mr. Carver Remington did go to Ilion.

A. If my recollection serves me right, we went down to Ilion for the purpose of, as I understood it at that time, looking over the Remington Arms Company's factory, creating a little stir, sell out the machine if the opportunity offered.

1242 146 Q. Was it the idea then, as you understood, that the purpose of visiting Ilion was to stir up the typewriter interests with a view to making Mr. Seamans, or those interested in the Remington enterprise at Ilion, a little anxious and to induce them to purchase the model machine?

Same objection as to last question, and the question is further objected to as manifestly leading and improper.

A. That's the way I understood the matter.

147 Q. Please state whether or not the purpose of the visit to Ilion was, among other things, to

make Mr. Seamans a little anxious and others con- 1243
nected with the Remington typewriter enterprise and to induce them to purchase the model and the improvements embodied therein; I mean The Z. G. Sholes model machine?

Same objection.

A. Well, that's the way I understood it.

148 Q. And you may state briefly, Mr. Sholes, what steps, if any, Mr. Carver Remington took in the way of making Mr. Seamans, or endeavoring to make, Mr. Seamans anxious to purchase?

Same objection.

A. I know of nothing more than our trip to 1244
Ilion.

149 Q. Was there any letter written which had any connection with the matter; I mean any letter to Mr. Seamans?

Same objection.

A. I had a letter from Mr. Seamans in regard to the matter, but it was taking up negotiations that I had had with Mr. Seamans before the Remington boys were interested; the letter was answered under the direction of Mr. Carver Remington.

150 Q. My question is a little indefinite as to time and I will ask you about when this letter which was written under the instructions of Mr. Carver Rem- 1245
ington was written and sent to Mr. Seamans?

Counsel for defendant requests that the letter in question be produced, or if it is not produced the question and other questions relating to the letter are objected to as incompetent, as well as immaterial and irrelevant.

A. Along in 1893 some time, the latter part.

151 Q. And was it before or after the trip to Ilion and how long before or after? A. Well, I think that letter was sent to me to Chicago. Before I received it we had left for the East, stopped at Utica and

1246 was there quite a long time. I should judge the letter was written before we had gone to Ilion and was forwarded from Chicago to New York. That's my recollection of it. I find I have misunderstood the previous question. The letter from Mr. Seamans to me was mailed to me at Chicago and remailed from Chicago to New York. My recollection of the matter is that that letter was taking up negotiations that I had pending with Mr. Seamans before the Remington boys became interested with me in The Z. G. Sholes model. That letter was mailed to me, I should judge, just after I had left for the East and was forwarded to me at New York City. If I remember rightly, I answered the letter under the di-
1247 rection of Mr. Carver Remington. This answer, I believe, was written about September, along in there, 1893. It was after the trip to Ilion I answered the letter, about two or three days after.

152 Q. And if I understand you, this letter which you wrote after the receipt of the letter of Mr. Seamans and under the direction of Carver Remington was written after the Messrs. Remington had acquired their interest in The Z. G. Sholes model and the inventions embodied therein; is that correct? A. Yes.

153 Q. On this visit East and to Ilion, who accompanied you from Chicago, if anybody, besides Carver Remington? A. I believe Mr. Franklin Remington
1248 was with us.

154 Q. And did all three of you go to Ilion together? A. Yes, we did.

155 Q. Did you have the model machine with you? A. Yes.

156 Q. And did you exhibit it to anybody while you were in the East and at Ilion, and if so, to whom? A. Yes, we showed the machine to a great many men at Ilion, too many for me to recall the names.

157 Q. Did you show it to anybody connected with the so-called Remington Arms Company? A. Yes.

158 Q. Did you show it to any one connected with 1249
the typewriter works of Wyckoff, Seamans & Benedict, at Ilion? A. Yes, a great number of the men there came up to look it over.

159 Q. Had you any name for the model machine at that time; I mean at the time of your visit to Ilion, or was it then stated what you expected to call the machine?

Question objected to as immaterial and irrelevant.

A. If I remember rightly, it simply had my name on the top plate. No, it was not stated what we expected to call the machine.

160 Q. Then, as I understand you, up to the time 1250
of your visit to Ilion in 1893 the name of your model machine had not been changed and it was then known and designated as The Z. G. Sholes; is that correct? A. That's the way I remember it.

161 Q. When, according to your best knowledge, was the name of the model machine changed, if it was changed, and to what name? A. I know the year, but I don't think I can give you the month.

162 Q. State the time according to your best knowledge and recollection? A. About November, 1893.

163 Q. Was there at that time an actual change in the name of the machine and was such change or new name placed on the top plate thereof in lieu of the name The Z. G. Sholes? A. Yes, there was an 1251
actual change in the name of the machine which was placed on the top plate in place of the name The Z. G. Sholes.

164 Q. After the name was changed to Remington-Sholes, was there or not any further negotiations with Mr. Seamans as regards the sale of the model or the inventions embodied therein? A. Not that I remember of.

165 Q. At the time of this change in November, 1893, were you then in touch with any capitalists or with any persons as regards the organization of any company or plan for the manufacture of machines

1252 like the model? A. Yes; we were endeavoring to interest capitalists to manufacture the machine.

166 Q. What persons or capitalists were you then in touch with or negotiation with looking toward the organization of a company for the manufacture of machines on the lines of said model? A. I don't now recall the names of the people.

167 Q. Where did these persons reside, if you know? A. Chicago, as near as I know.

168 Q. When did you first meet Mr. Fay, who is now the president of the Remington-Sholes Company and was formerly president of the Remington-Sholes Typewriter Company? A. I should judge in March, 1894, along in there.

1253 169 Q. How soon after you met Mr. Fay did you enter into an arrangement with him in regard to the organization of the Remington-Sholes Typewriter Company? A. The latter part of April, 1894, I should judge.

170 Q. Before you met Mr. Fay had you had any negotiations with any persons who afterwards became directors or incorporators of the Remington-Sholes Typewriter Company. A. We had some negotiations with Franklin H. Head.

171 Q. When did you first meet Head and have negotiations with him in regard to the organization of the company for the manufacture of your model machine? A. I should judge it was in January or

1254 February of 1894.

172 Q. Did you meet any other of the incorporators or dirctors of the Remington-Sholes Typewriter Company outside of Messrs. Remington prior to your acquaintance and negotiations with Franklin H. Head? A. Not as I now remember.

173 Q. I show you what purports to be a notice written on one of the letterheads and sheets of the Remington-Sholes Typewriter Company and ask you to examine the same and to say whether or not that was a notice which you received at or about the time it bears date and whether it is on a letter-

head such as the Remington-Sholes Typewriter Com- 1255
pany used at that time? A. Yes.

The notice and letterhead shown the witness and identified by him are offered in evidence and marked "Complainant's Exhibit Remington-Sholes Typewriter Company Letterhead."

The notice offered in evidence is objected to as immaterial and irrelevant, but no objection is made to the letterheading of the sheet wherein the notice is written.

174 Q. After the organization of the Remington-Sholes Typewriter Company, or about the time of the organization, did you hear Mr. Fay say anything as regards the value or importance of the name 1256
Remington-Sholes as attached to or connected with the machine, or the business of the Remington-Sholes Typewriter Company, and if so, kindly state as nearly as you can remember what he said in that regard?

Objected to as immaterial and irrelevant.

A. Why, I have heard him express himself on it, I believe, on that subject. He made a remark to me at one time that he thought he had paid too much for the machine, and the only value he attached to it was the name.

175 Q. Do you mean the name of the machine Remington-Sholes? 1257

Same objection.

A. Yes, sir; the name Remington-Sholes. That was not the time of the organization.

176 Q. State as nearly as you can remember when Mr. Fay made that statement to you?

Same objection.

A. Somewhere shortly after he returned from abroad. It was in the latter part of the year 1895.

Complainant's counsel now offers in evidence an exemplified copy of the Articles of Incor-

1258 poration of the Remington-Sholes Company, and the same are filed in evidence and marked "Complainant's Exhibit Remington-Sholes Company Articles of Incorporation."

177 Q. During the time that you were connected with the Remington-Sholes Typewriter Company state, if you know, to what extent they manufactured typewriting machines bearing the name Remington-Sholes, and where such machines were sold? A. I don't remember how many we manufactured. I can give a rough estimate. Six or seven hundred; eight hundred the first year. That's as near as I can estimate. It may have been a thousand. I think, if I remember right, we calculated to make a
1259 thousand. The machines were sold throughout the United State principally.

178 Q. Do you know whether or not the Remington-Sholes Company is now engaged in the manufacture and sale of typewriting machines; and if so, state, if you know, where their machines are sold? A. As far as I know the Remington-Sholes Company are manufacturing machines, and selling them in all civilized countries.

179 Q. If you know, state where they are selling most largely? A. From hearsay I should think they are selling more in Germany than any other place.

180 Q. Do you know whether Mr. Franklim Rem-
1260 ington has recently been abroad exploiting and promoting the sales of the so-called Remington-Sholes or Rem-Sho typewriting machine? A. I know he has been abroad and I supposed for that purpose.

181 Q. Do you know Mr. Fred L. Sholes? A. I have a brother Fred.

182 Q. Do you know whether or not there is a Mr. Fred L. Sholes, who is connected with the Remington-Sholes Company? A. No one by the name of Fred L. Sholes is connected with the Remington-Sholes Company. There is a Frank L. Sholes connected with the company.

183 Q. State, if you know, what his relations to 1261
said company are? A. I understand that he is the manager of the Philadelphia office and surrounding territory.

184 Q. How long has he been in the service of the Remington-Sholes Company to your knowledge? A. Off and on for four years.

185 Q. Has he ever been connected with or had under his supervision the Baltimore or Washington offices either of the Howe Scale Company or of the Remington-Sholes Company, to your knowledge? A. I understood it that way. He controlled the Baltimore and Washington offices from Philadelphia I believe.

186 Q. And for how long a period of time has he 1262
had the Baltimore and Washington offices under his supervision and control? A. I don't know, sir.

187 Q. Can you state approximately? A. No; I know nothing about the arrangement.

188 Q. But you do know the fact that he has had charge or control of those offices. I mean the Baltimore and Washington offices? A. Yes, I do.

Adjourned to Friday, July 21, 1899, at 10 A.M.

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NEW YORK, July 21, 1899, 10 A. M.

Met pursuant to adjournment. 1263

Present—Counsel as before.

DIRECT-EXAMINATION of ZALMON G. SHOLES continued:

189 Q. At and before the business of the Remington-Sholes Typewriter Company was closed out by Mr. Fay, state, if you know, who the controlling stock holders of the company were?

The question is objected to not only because it is immaterial and irrelevant, but because it

1264 is misleading, as there is nothing in the record to show or in any manner to indicate or warrant the insinuation that the business of the Remington-Sholes Typewriter Company was closed out by Mr. Fay or by any other single individual.

A. Mr. Fay and Mr. Head.

190 Q. Did Messrs. Fay and Head own a majority of the capital stock of the company at the time there was a sale of the assets of the Remington-Sholes Typewriter Company?

Objected to as immaterial and irrelevant.

1265 A. Yes.

191 Q. State, if you know, what was the cause of the sale of the assets of the company?

Same objection.

A. To liquidate its debts.

192 Q. To whom was the company indebted, if you know; if you know you may state?

Same objection.

A. Mr. Fay principally.

193 Q. Do you know what amount of the capital stock of the Remington-Sholes Company is owned by Mr. Franklin Remington, and if so, please state
1266 the amount thereof? A. As near as I know, about fifteen thousand dollars.

194 Q. Has Mr. Franklin Remington, to your knowledge, ever been engaged in the manufacture of typewriting machines personally or otherwise than as an officer or agent of the Remington-Sholes Typewriter Company or the Remington-Sholes Company? A. Not to my knowledge.

195 Q. State, if you know, and so far as you know, what the duties of Mr. Franklin Remington were when he was connected with the Remington Sholes Typewriter Company and since he has been connected with the Remington-Sholes Company? A.

In the Remington-Sholes Typewriter Company he 1267
was general manager and part of the time acted as secretary and treasurer. From what I see I should judge he was general manager of the Remington-Sholes Company.

196 Q. What were your duties when you were connected with the Remington-Sholes Typewriter Company? A. In its infancy, I was the superintendent of the factory.

197 Q. Who succeeded you as superintendent? A. I was asked to take the Chicago office, which I did, and the office of superintendent was abolished for a time; Mr. Fay superintended the factory, you might say, and I believe the place was eventually given to a man by the name of Hochklassen. 1268

198 Q. What were the duties of the superintendent in the Remington-Sholes Typewriter Company's factory? A. The general supervision of the manufacture of the machines.

199 Q. State, if you know, who has been the superintendent of the Remington-Sholes Company and looked after the manufacture of its machines? A. Mr. Hochklassen.

200 Q. Do you know whether Mr. Hochklassen is now superintendent of the Remington-Sholes Company's factory? A. Yes, sir; that's what I understand him to be at the present writing.

201 Q. I show you a booklet which purports to be issued for the purpose of advertising the Reming- 1269
ton-Sholes typewriter, or Rem-Sho typewriter, and ask you to look at the same and to state, if you know, whether said booklet is now being circulated in public, or is kept at the offices of the Remington-Sholes Company for circulation in public? A. Yes, sir; it is.

202 Q. Where did you obtain said booklet, if you did obtain it? A. It was given to me by the manager of the Rem Sho office in this city.

The booklet shown to witness and identified by him is offered in evidence and is marked "Complainant's Exhibit Rem-Sho Booklet."

1270 203 Q. At the time the name Remington-Sholes was adopted for your model machine did you then realize that it was a good combination and a good name for your machine? A. Why, yes; I realized my association with the Remington boys was a good combination.

204 Q. And did that idea grow upon you as you went about publicly soliciting capital or persons to become interested in your enterprise?

Question objected to as leading and as immaterial and irrelevant.

A. Yes; very naturally it did.

205 Q. And did the idea occur to you and did it
1271 grow upon you that in view of the association of the name Remington with the typewriter business it was a happy combination with the name Sholes?

Same objection.

A. Yes, that was my opinion of the matter.

206 Q. When you made up this combination or this name, did you realize or think that it was a good combination in view of the fact that there had been and was a machine upon the market in connection with which the name Remington was used?

Same objection.

1272 A. Very naturally I thought the association of the two names was a good combination.

207 Q. And did you think it a good combination because there was another machine upon the market —I mean typewriting machine—in connection with which the name Remington was used?

Same objection.

A. I thought it was a good combination because my father was the originator of what is known as the Remington machine and Mr. Remington's father had been the manufacturer.

208 Q. If the names of the Messrs. Remington had

been Smith or Peterson would you have changed 1273
the name of your machine?

Same objection.

A. No, I don't think I would.

209 Q. Then I take it, Mr. Sholes, that you thought there was some value in the use of the name Remington in connection with your name upon your model? Is such the fact?

Same objection.

A. No question about it; that was always my opinion.

210 Q. And would you have used the name Remington upon your model if the Remingtons name had not been associated with the typewriting 1274
machine which had been manufactured and sold in the market under or in connection with the name Remington? A. I wouldn't have used the name Remington in connection with my name unless Mr. Remington had been associated with me in the business.

211 Q. At the time you adopted the name Remington-Sholes for your machine, did you or not know that there was a typewriting machine on the market and had been for a good many years in connection with which the name Remington, and had been and was used? A. Yes, sir, I was well aware of the fact.

212 Q. Did you know this fact and did you take 1275
this fact into consideration when you gave your model machine the name Remington-Sholes?

Objected to as leading.

A. I knew such a machine existed as the Remington Standard machine; I don't just recall my thoughts on the subject at that time. As far as the value of the name Remington-Sholes was concerned, I always attached a certain value to it, and thought the combination a very good one.

213 Q. On account of your knowledge of the Remington machine, did you not think that it would be

1276 an advantage in the manufacture and sale of machines like your model to associate the name Remington with your name Sholes in connection with the manufacture and sale of your machine?

Same objection.

A. After I had become associated with Mr. Remington and we had run along some months, I realized that it was a good combination, the name Remington-Sholes, but before my association with him I can't say I ever gave it any thought.

214 Q. Well, did you think it would be an advantage in the sale of your machine to have it sold under the name Remington-Sholes? A. Yes, I did.

1277 215 Q. And did you think it would be an advantage because there had been and was a typewriting machine on the market in connection with which the name Remington had been and was used?

Objected to as immaterial and irrelevant, and as leading.

A. I explained that once before by saying that owing to my father being the originator of the Remington standard machine, and Mr. Remington's father being interested in the manufacture of the machine, I very naturally thought it of value for he and I to be associated together in the manufacture of another typewriter.

216 Q. How did you think it would be of advan-

1278 tage, except in the use of the name Remington upon or in connection with your machine?

Same objection.

A. I never had occasion to use it in any other way in connection with my name; as I have explained, I thought the name Remington-Sholes a good combination for a typewriter.

217 Q. And you thought that the name Remington was a valuable addition to your name because that name had been used with another typewriter business and another typewriting machine?

Same objection.

A. Yes.

CROSS-EXAMINATION by Mr. Fisher: 1279

218 x-Q. You knew, did you not, at the time that the name of the model machine was changed, that the name Remington was world famous in other connections besides its connection with typewriting machines?

Objected to as immaterial and irrelevant.

A. I knew of the Remington rifle and Remington sewing machine.

219 x-Q. And at that time you believed that this name Remington was a good name to associate with any manufacturing business?

Same objection. 1280

A. I never thought of it outside of my machine, as I was not interested in any other manufacturing pursuits but the manufacture of a typewriter.

220 x-Q. If I understood you correctly, the name of your model machine was changed in or about November, 1893; is that correct? A. That's my recollection of it.

221 x-Q. To what was the name changed at that time? A. Remington-Sholes.

222 x-Q. Who gave the machine that name at that time or who suggested the name? A. I did.

223 x-Q. Was the name placed upon the machine at that time, I mean the new name, Remington-Sholes? A. Yes, I caused it to be painted on the 1281 front of the top plate.

224 x-Q. Prior to the time when you caused this name to be painted upon the top plate of your model machine you had had no talk in regard to the adoption of such a name with the Remington boys, had you? A. No, not that I now recall.

225 x-Q. And the exhibition of the machine with the new name, Remington-Sholes, was the first they knew of that name? I mean Franklin and Carver Remington. A. Yes.

226 x-Q. Did that name Remington-Sholes remain

1282 on the machine and was it on it when you last saw the model machine? A. As I remember it, yes.

227 x-Q. At the time of the organization of the Remington-Sholes Typewriter Company were you and Mr. Franklin Remington desirious of having your names given to such company? I mean was it not the wish of both of you?

Objected to as immaterial and irrelevant.

A. As I remember it, there was no discussion about it; it was a foregone conclusion that the name would be used; we had no discussion on it; kind of took it for granted. I personally had very little to do with the organization; in fact, I left the matter
1283 entirely in Mr. Franklin Remington's hands.

228 x-Q. But you regarded the naming of the corporation, the Remington-Sholes Typewriter Company, as entirely proper and appropriate under the circumstances, did you not?

Same objection, also as improper because it calls for the opinion or conclusion of the witness.

A. As I stated before, I must say that I don't think I gave the matter a great amount of thought at the time.

229 x-Q. When you first showed your model machine to Mr. Carver Remington, did he express any
1284 opinion as to its value? A. He seemed to take kindly to the machine. I cannot recall now his expressions on the machine.

230 x-Q. After the purchase of the three-quarter interest by the Remington boys in your model machine, which of the Remingtons gave most attention to the exploiting of the machine or appeared to take the most interest in its perfection? A. In the first month both Mr. Carver and Mr. Franklin seemed to give it equal attention, and after that Mr. Franklin Remington gave, you might say, his entire attention to the promotion and welfare of the machine.

231 x-Q. State whether or not you discussed with

Mr. Franklin Remington any changes or modifica- 1285
tions that were made in the model machine after he became interested with you; I mean did you and he advise together in regard to such matters?

Objected to as immaterial and irrelevant.

A. I never took any steps in connection with our model machine, or the business thereto, without first consulting Mr. Franklin Remington.

232 x-Q. You may state what opinion Mr. Franklin Remington was accustomed to express to you and to others in your presence in regard to the value and superiority of your model machine, if any?

Same objection as last, also as calling for hear- 1286
say evidence and not the best evidence.

A. We naturally thought, we had the best machine that had ever been built, and I don't think we ever failed to talk it.

233 x-Q. Did you consider at that time that the value was in the machine or that the value was in the name?

Objected to as incompetent and improper because it calls for the opinion of the witness on a question about which it is not competent for the witness to express an opinion, also as not proper cross-examination.

(233 x-Q. continued.) I mean to ask you, Mr. Sholes, 1287
whether you did not regard the machine as of high value and merit independently of any name?

Same objection as last.

A. I very naturally thought a great deal of my own creations in the way of typewriters, and I also prized very highly my connection with the Remington boys.

234 x-Q. When Mr. Franklin Remington connected himself with you, it was with a view to manufacturing your model machine, was it not, or of making machines like it, I mean? A. I didn't ask him any

1288 questions on the subject at that time. I was too well pleased to get under cover.

235 x-Q. State, if you know, which of the Remington boys expended the greater amount of money in connection with the perfecting and exploiting of your model machine? A. As I understand it, Mr. Franklin Remington was the man who furnished the money.

236 x-Q. Can you state about how much he furnished? A. Yes; in purchasing interests and towards the general promotion—I mean by that towards interesting capital, traveling expenses, salaries, &c., if my recollection serves me, fifteen thousand dollars.

1289 237 x-Q. In your answer to direct-question 137, in which you were asked about how much money did the Messrs. Remington put into the business connected with your model machine, you stated that it was in the neighborhood of $15,000. Please say whether this money was put in by both the Remingtons or by Franklin Remington alone, and state what you know in this connection?

Objected to as immaterial and irrelevant.

A. I received all my moneys from Franklin Remington, and, as I now understand it, he furnished the capital, and I believe he and his brother had some personal arrangements, which I know little or
1290 nothing about, in regard to the money invested.

238 x-Q. State what you understood, at the time of the incorporation of the present Remington-Sholes Company, to be the reason why, in the process of reorganization, or rather in the formation of this new company, Franklin Remington received shares of stock and Carver Remington received none? I mean that you should state, if you know, how it happens that Mr. Franklin Remington now owns and has since its organization owned, shares of stock in the new company, while Carver Remington has none? A. As far as I know, the way I understand it from hearsay, that, after the

reorganization of the company, Mr. Fay gave Mr. 1291
Franklin Remington the stock which he has, as I understood that Mr. Fay thought that it was due to him as he had originally invested $15,000 in the early stages of the enterprise in purchasing interests and expending money in other affairs in connection with the model.

239 x-Q. And that was your understanding of the matter at the time of the reorganization, or at the time of the formation of the new company, was it not?

Objected to as immaterial and irrelevant and as calling for the understanding of the witness and not his knowledge.

1292

A. I can't say when I learned the fact; I don't remember. I don't think, though, that I knew about it at the time of the reorganization of the company. I mean by that that I was not interested in the reorganization of the company in any manner, shape or form.

240 x-Q. Do you not recall that the purpose of the reorganization or formation of the new company was to give stock to those persons who had actually put money into the old company or into the development of the machine and in keeping with the amount that they had so put in or expended?

Objected to as immaterial and irrelevant and as incompetent and as not proper cross-exam- 1293
ination.

A. As I now recall it, I remember of Mr. Fay's saying that he was going to take care of those who had invested money in the previous company; I mean by that the Remington-Sholes Typewriter Company, and I don't remember or recall of his saying anything about those who invested money in the machine, as I'd rather come under that head myself. However, if I remember rightly, he considered Mr. Franklin Remington's case a little different than he did mine, inasmuch as he thought I

1294 had sold enough of my stock in the Remington-Sholes Typewriter Company to reimburse me for my expenditures in connection with my model, and as far as Franklin Remington is concerned, as I said, I think he viewed his case in a different light.

The answer of the witness is objected to on the same grounds as the question, and also as hearsay evidence and not the best evidence, which would be the evidence of Mr. Fay himself.

241 x-Q. If I understood you correctly, you have testified that you personally opened negotiations with Mr. Seamans before Carver Remington and
1295 Franklin Remington became interested with you in your model machine; is that correct? A. As I have before stated, I had been corresponding with Mr. Seamans in regard to the purchase of my model.

242 x-Q. When you and the Remingtons went to Ilion, as you have testified, did you or they see Mr. Seamans? A. No, sir.

243 x-Q. After you left Ilion you and the Remingtons came to New York City, did you not? A. Yes, sir; I came on ahead.

244 x Q. And you then received the letter that Mr. Seamans had written to you and had addressed to Chicago and in which he stated that in view of your connection with the Remington boys he sup-
1296 posed that your negotiation with him would be off; is that correct? A. That's about right, sir.

245 x-Q. After the receipt of this letter you replied or wrote to Mr. Seamans at the suggestion of Mr. Carver Remington, did you not? A. Yes, sir.

246 x-Q. What did you say in that reply to Mr. Seamans? A. As I stated before, I asked him, I believe, to meet me at some hotel—I don't remember the hotel—in regard to talking over the possibility of a sale, or at least that's what I meant.

247 x-Q. Did you ask him to meet you at some hotel, or did you tell him that you would be stopping at some hotel, or that Mr. Carver Remington

would be stopping at some hotel and would consider the matter with him if he cared to call? State the way in which the letter to Mr. Seamans was expressed as near as you can. A. If my recollection serves me right, I asked him to come and see me; it may not have been just exactly in that wording, but that is what I meant. 1297

248 x-Q. State whether during your visit to Ilion you received any expressions of opinion from typewriter experts with regard to the value and merit or superiority of your model machine?

Question is objected to as immaterial and irrelevant, as calling for hearsay evidence and not the best evidence.

1298

A. A great many men called to see the machine. I don't now recall their views of the matter on the machine; I believe some of them did think it was a very fine affair and so expressed themselves. I couldn't recall any of their names.

249 x-Q. So far as you know, did Mr. Franklin Remington or Mr. Carver Remington ever talk with or have any correspondence with Mr. Seamans? A. Not to my knowledge.

250 x-Q. So far as you know, did they ever make any overtures to Mr. Seamans or his company with a view to disposing of your model machine or their interest therein, after their return from the eastern trip concerning which you have testified? A. Not to my knowledge. 1299

251 x-Q. Is it not a fact that after you and the Remingtons returned from the eastern trip Mr. Franklin Remington repeatedly advised against or restrained you from opening negotiations with Mr. Seamans?

Objected to as immaterial and irrelevant.

A. As I now recall the matter, there was some talk about attempting to open negotiations with Mr. Seamans, and Mr. Franklin Remington did object.

252 x-Q. At the time the Remington-Sholes Type-

1300 writer Company was organized, was it not understood that you were to devote your entire time and energies to its business, and did you not do so from that time and for a long period thereafter?

Same objection.

A. To the best of my ability, yes.

253 x-Q. Is it not a fact that you and Mr. Franklin Remington practically ran the whole business of the Remington-Sholes Typewriter Company during the first year of its existence?

Same objection, and not proper cross-examination.

1301 A. I can say that up to the time that Mr. Fay came back from Europe we practically ran the business. Mr. Fay returned, if I remember right, in the summer of 1895.

254 x-Q. What were the respective duties of yourself and Mr. Franklin Remington during that time?

Same objection.

A. Mr. Remington was general manager, if I remember right, and I was supposed to be superintendent.

255 x-Q. Is it not a fact that during this time numerous changes, modifications and improvements were made over your model machine, and is it not
1302 also a fact that you consulted and advised with Mr. Franklin Remington in regard thereto?

Same objection.

A. In preparing the machine for the market there were naturally modifications and changes in matter of detail; naturally Mr. Remington and I talked these matters over before anything was done.

256 x-Q. And all such changes were made subject to and with his approval, were they not?

Same objection.

A. Yes, sir.

257 x-Q. During the time that you and Mr. 1303
Franklin Remington were running the business—I mean during the first year of the Remington Sholes Typewriter Company, where was Mr. C. N. Fay and what was he doing in connection with such business?

Same objection.

A. Part of the time he was in Europe, Newport and Chicago.

258 x-Q. After the Remington-Sholes Typewriter Company ceased doing business who, if any one, conducted the business that had been conducted by said company or who succeeded to its business? A. As I understood it, C. N. Fay.

259 x-Q. At the time the Remington-Sholes Typewriter Company ceased doing business, where were its offices and factory located? A. The factory was at 127 Rees street, Chicago. If I remember rightly, the office was at 147 Monroe street, New York Life Insurance Building, Chicago, Ill. I mean the sales office. 1304

260 x-Q. State whether or not Mr. C. N. Fay succeeded to the business of the Remington-Sholes Typewriter Company, and if so, whether he continued to conduct said business of manufacturing typewriting machines at 127 Rees street, Chicago. A. Yes.

261 x-Q. And did he so continue until the organization of the present Remington-Sholes Company? A. Yes, he did. 1305

262 x-Q. And the new company, that is, the Remington-Sholes Company, succeeded to the same business and conducted it at the same place, did it not? A. Before the reorganization of the new company, as I have before stated, I was in the employ of C. N. Fay, and to the best of my knowledge after the reorganization they continued to manufacture the machines at the same place.

263 x-Q. By what name was the typewriting machine manufactured by the Remington-Sholes Type-

1306 writer Company known or designated and what name, if any, was marked upon all typewriting machines manufactured by said Remington-Sholes Typewriter Company, or upon the cases or covers of such machines? A. Remington-Sholes.

264 x-Q. Was the same name used in the same manner by Mr. C. N. Fay after he succeeded to the business of the Remington-Sholes Typewriter Company? A. The name of the machine was changed to Rem-Sho. I don't now recall the date or the time it was changed, whether it was before or after Mr. Fay succeeded to the Remington-Sholes Typewriter Company.

265 x-Q. State, if you recall, what name, if any,
1307 and what address, if any, were marked upon the typewriting machines manufactured and sold by the Remington-Sholes Typewriter Company during its existence? A. If I remember rightly there was a plate on the front of the machine, that is, the cross bar of the machine, and the name Remington-Sholes Typewriter, manufactured by the Remington Sholes Typewriter Company, Chicago, U. S. A.

266 x-Q. State what name and address appeared upon the machines manufactured and sold by Mr. C. N. Fay after he succeeded to the business of the Remington-Sholes Typewriter Company? A. I don't now recall whether it was Remington-Sholes or Rem-Sho.

1308 267 x-Q. But you know, do you not, that it was one or the other of these names? A. I naturally suppose so.

268 x-Q. What address appeared upon such machines that were manufactured and sold by Mr. Fay? A. I don't remember.

[Recess.]

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269 x-Q. Is it not a fact, Mr. Sholes, that during the existence of the Remington-Sholes Typewriter Company the machine manufactured and sold by

said company was widely advertised and became generally known as the Remington-Sholes machine? 1309

Objected to as incompetent and improper and as calling for secondary evidence and not the best evidence.

A. Yes.

270 x-Q. And the machine, during such time, was generally known by such name not only in this country, but also abroad, was it not?

Same objection, and also that it has not been shown that the witness has been abroad or has had any opportunity for judging or knowing how it is known abroad.

1310

A. So far as this country is concerned, it was. As far as I know, it was known as the Remington-Sholes in European countries. I have no other means of knowing—that is, in regard to the European countries—only by hearsay.

271 x-Q. You know, do you not, that the Remington-Sholes Typewriter Company, during its existence, expended a large amount of money in advertising the machine as the Remington-Sholes typewriter?

Question objected to as calling for the conclusion of the witness and not for a statement of facts. The witness should be required to state, if he knows, the amount of money expended, leaving the Court to judge whether the amount was large or small. 1311

A. I know it was advertised as the Remington-Sholes typewriter, but nothing about the amount of money that was spent. I had nothing to do with the advertising department.

272 x-Q. You know, do you not, that the Remington-Sholes Typewriter Company established various agencies throughout different parts of this country for the sale of its machines under the name Remington-Sholes typewriter? A. Yes, we estab-

1312 lished offices in different cities throughout the United States.

273 x-Q. It is also a fact, is it not, that the machines manufactured and sold were designated in the advertising material issued by the said company as the Remington-Sholes typewriter?

Question objected to as incompetent because it calls for secondary evidence and not the best evidence, which are the advertisements.

A. Yes, it was, as I now remember.

274 x-Q. In the course of your direct examination you have stated, I believe, that during the first year of its existence the Remington-Sholes Typewriter
1313 Company manufactured about one thousand machines; is that correct? A. I believe that is correct.

275 x-Q. State as near as you know how many machines the old Remington-Sholes Typewriter Company manufactured during its whole existence? A. I'll have to give a very rough estimate on that. I should judge up to the time I severed my connection, thirty-five hundred.

276 x-Q. And those machines were sold throughout the United States and foreign countries, were they not? A. Yes. In my former statement I made the remark that I didn't know exactly at what time the name was changed, whether it was before or after I left, so, of course, if the name had been
1314 changed to the Rem-Sho before I left those machines, some of them were sold under the name Rem-Sho. My recollection of the matter is, though, that the name was changed before I severed my connection.

277 x-Q. Do you not know it to be a fact, Mr. Sholes, that from the inception of its business it was the practice of the Remington Sholes Typewriter Company and its officers to use every reasonable precaution to prevent the confusion of its machines in the market with the machines manufactured by Wyckoff, Seamans & Benedict?

Question is objected to as incompetent and improper, because it calls for the opinion or con-

clusion of the witness and for the motives and 1315
intentions of others than himself, and as otherwise improper and incompetent, also as being new matter and not proper cross-examination.

A. It was not our endeavor to confuse our machines with the Remington Standard.

278 x-Q. You may state, if you know, what efforts, if any, were taken by the Remington-Sholes Typewriter Company to prevent such confusion? A. I believe our catalogue at that time shows for itself.

279 x-Q. Do you recall anything in connection with the sign appearing upon the window of the sales office of the Remington-Sholes Typewriter Company that would refresh your memory as to the efforts of the said company to prevent confusion be- 1316
tween its machine and those manufactured by Wyckoff, Seamans & Benedict? A. Under our sign on the office at 13 Monroe street, Chicago, the sentence "Not the Remington Standard" was painted.

280 x-Q. Was this sentence painted in large and conspicuous letters? A. I believe they were about what are called three-inch letters.

281 x-Q. Do you recall any other connection or situation in which this sentence was used? A. I don't recall that particular sentence.

282 x-Q. Well, do you recall any other connection in which a sentence of like import was used? A. I think the wording of our catalogues, if I remember rightly, were upon that subject. However, you can 1317
easily tell by referring to the catalogues.

283 x-Q. Is it not a fact, Mr. Sholes, that the salesmen and agents of the Remington-Sholes Typewriter Company were specifically directed to call attention to the fact that the Remington-Sholes machine was an entirely distinct product from the Remington Standard typewriter?

Question objected to as immaterial and irrelevant, as incompetent and improper because there is no evidence to show that Mr. Sholes had anything to do with the sales department of the

1318 company, and even if he did there is no evidence to show that he knows what instructions were communicate l to the various agents and dealers of the Remington-Sholes Typewriter Company scattered throughout the United States and in foreign countries, and besides there is no evidence that the agents or dealers followed the instructions even if they were given.

A. My knowledge on that point is confined particularly to the Chicago office during my management there. As I said before, it wasn't our intention to confuse the Remington-Sholes machine with the Remington Standard.

284 x-Q. And you gave the salesmen under you to
1319 understand this fact, did you not?

Same objection.

A. There was a general understanding to that effect, if I remember rightly.

285 x-Q. Did you ever have any agreement or understanding with Mr. Franklin Remington or Mr. Carver Remington that they or either of them, should have any compensation for the use of the name Remington, or was this matter ever discussed between you?

Objected to as immaterial and irrelevant.

A. Never, to my knowledge.

1320 286 x-Q. Is it not a fact, Mr. Sholes, that after Mr. C. N. Fay succeeded to the business of the Remington-Sholes Typewriter Company, Mr. Franklin Remington continued with him in the manufacture and sale of the Remington-Sholes typewriter? A. Yes, sir.

287 x-Q. And gave his entire time and attention to the business as an employee of Mr. Fay and as manager of the business? A. To my knowledge, yes.

288 x-Q. When did you first make the acquaintance of Mr. Clarence W. Seamans? A. In the year 1883.

289 x-Q. How did you happen to meet Mr. Sea- 1321
mans at that time? A. I came down to New York to go into the typewriter factory at Ilion, New York. I met Mr. Seamans through Mr. Densmore at the Remington Standard Typewriter Company's sales office which was at that time on Thomas street.

290 x-Q. Did you enter the employ of Wyckoff, Seamans & Benedict or its predecessors at that time? A. They allowed me to work at the factory but I didn't receive anything for the time I put in from them.

291 x-Q. Was there ever any agreement between the officers or stockholders of the Remington-Sholes Typewriter Company that either Mr. Franklin Remington or Mr. Carver Remington should receive any 1322
compensation for the use of your name? A. Not to my knowledge.

292 x-Q. You have been familiar with the machine known as the Remington Standard typewriter for a number of years past, have you not? A. Yes, sir.

293 x-Q. About how long? A. Since the year 1883.

294 x-Q. You know, do you not, that since that time it has been the practice of the makers of the Remington Standard typewriter to mark their machines with such name and also with the name of the place of manufacture? A. I believe the machines have been so marked.

295 x-Q. State, if you know, how long it has 1323
been the practice to use upon such machines the picture of a typewriting machine upon a circular seal of reddish color bearing the words "Standard Remington?" A. I don't know.

296 x-Q. What was your father's name? A. Christopher Latham Sholes.

297 x-Q. You have stated, I think, that your father was the original inventor of the machine known as the Remington Standard typewriter; is that correct? A. Yes, I believe that is my former statement.

1324 298 x-Q. I call your attention to U. S. Patent No. 207,559, granted to C. Latham Sholes, assignor to the Typewriter Company of New York, N. Y., for improvement in typewriting machines and dated August 27, 1878, and ask you whether you are familiar with such patent and the typewriting maching therein described, and whether the C. Latham Sholes mentioned in such patent was your father? A. As far as the patent is concerned, I am not particularly conversant with it; I have seen it. C. Latham Sholes was my father.

299 x-Q. You may state, if you know, whether or not the early Remington machines manufactured by E. Remington & Sons were made upon the lines of
1325 and embodying the subject matter of this patent No. 207,559? A. If I remember rightly, to some extent, yes.

300 x-Q. Is it not a fact that your father was the inventor of very important features of the modern typewriting machine?

Objected to as immaterial, irrelevant and incompetent. The patents will speak for themselves and are the best evidence of what Mr. Sholes invented.

A. I always understood so.

301 x-Q. And your father was the patentee or the inventor of many other patented improvements in typewriting machines, was he not?
1326

Objected to as immaterial and incompetent.

A. I always understood it so.

The patent shown the witness, being Patent No. 207,559, is offered in evidence and marked "Defendant's Exhibit C. L. Sholes Patent of 1878."

302 x-Q. Please state whether or not you are at the present time in the employ of any person or corporation, and if so, in whose employ? A. All my dealings have been with C. W. Seamans, and so

far as I know I am in his employ at the present time. 1327

REDIRECT-EXAMINATION:

303 RD-Q. In the letter which you wrote to Mr. C. W. Seamans under the direction and supervision of Mr. Carver Remington, did you or not ask Mr. Seamans to call on you and Remington at the hotel where you were stopping in this city? A. My recollection of the matter is I did.

304 RD-Q. Did you suggest that you would call upon him if not convenient for him to call upon you? A. I don't think I suggested that I should call upon him. 1328

305 RD-Q. In your cross-examination, you have been asked whether or not you did not consult Mr. Franklin Remington as regards any and all changes in the mechanism of the machine before making such changes; were such consultations simply in relation to the making of the changes, that is, obtaining the necessary authority to make the changes, or did they relate to the inventing or devising of the mechanism used in making such changes? A. Mr. Remington was general manager and in Mr. Fay's absence had entire charge of the business, and before any changes could be made and were made they had to have his approval. The consultations were simply to get his approval on the changes. 1329

306 RD-Q. Do you understand it to be a fact that numerous inventors and mechanics were engaged in reducing the so called Remington typewriter now manufactured by Wyckoff, Seamans & Benedict to marketable form and that the principal inventors were Sholes, your father, Jenne, Brooks and Yost? A. As I have before stated, I understood that my father was the original inventor of the so-called Standard Remington machine and naturally I have known during the course of my experience that such men as Brooks, Yost and Jenne have made improvements thereto. With regard to Glidden, if my rec-

1330 ollection of the matter is correct, in the early conception of the now so-called Remington Standard he played a minor part in the inventions.

307 RD-Q. The original Sholes & Glidden machine, and which was the one first manufactured by E. Remington & Sons was a single case machine, was it not? A. Yes, sir, it was.

308 RD-Q. And what you call the Remington Standard at present is an upper and lower case machine, and the type bars are provided with upper and lower case characters, two on a bar and the platen has one shift from normal position; is such the fact? A. Yes, sir, undoubtedly.

1331 RECROSS-EXAMINATION:

309 Re-x-Q. Is it not a fact, Mr. Sholes, that the letter which you wrote to Mr. C. W. Seamans at the direction of Mr. Carver Remington merely stated that you were or would be at the Murray Hill Hotel, New York, or some other New York hotel, and that you would be pleased to see him there, and is it not also true that in such letter Mr. Remington's name was not mentioned? A. My recollection of the matter is that I asked him to call and it was in regard to the machine; of course I don't remember the exact wording of the letter. I can't state positively whether Mr. Remington's name was mentioned or not in the letter.

1332 310 Re-x-Q. But it is a fact, is it not, that before writing such letter you and Mr. Carver Remington decided to take an independent position and let Mr. Seamans take the initiative if he cared to do so in regard to making any deal with him? A. That was the intention, as I now remember it.

(Signed) ZALMON G. SHOLES

F. LYMAN BROWNE, a witness called on behalf of the complainant, having been first duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly: 1333

1 Q. Please state your name, age, residence and occupation? A. F. Lyman Browne; age, forty-one; occupation, dealer in typewriters; residence, New York City.

2 Q. Where is your occupation as dealer in typewriters carried on in New York City? A. At 241 Broadway.

3 Q. How long have you been engaged in the occupation of dealer in typewriters and in what city has such business been carried on? A. Since 1881, in this city.

4 Q. What is your business—selling any particular typewriters or all kinds and makes? A. All 1334
kinds and makes.

5 Q. Are you familiar with the typewriting machines sold by Wyckoff, Seamans & Benedict, and, if so, for how long a period have you been familiar with their machines? A. Yes; since 1881, with all the different makes.

6 Q. How are the machines of Wyckoff, Seamans & Benedict, which you have sold and handled in this market, generally designated? A. They are called the Remington machines.

7 Q. What other makes of machine have you handled in recent years besides the machines of Wyckoff, Seamans & Benedict? A. Nearly all the different makes.

8 Q. Are you to any extent familiar with the ex- 1335
port trade as well as the domestic trade in typewriting machines? A. No; I am not as familiar, but know something about it.

9 Q. Do you know what the extent of the export trade in typewriting machines is, whether large or small, and if so, state what you know on that subject? A. It has grown to be a very extensive business in the last few years, but I couldn't give the exact figures.

10 Q. To what countries does the export trade extend, and what are the principal countries, in so

1336 far as you know? A. It extends to nearly all the countries, and principally to Europe and Asia.

11 Q. Are you acquainted with the typewriting machine called the Remington-Sholes or the Rem-Sho, and if so, for how long a period have you had knowledge of such a machine? A. Yes; I am acquainted with it, and have known it ever since 1894, about the first.

12 Q. What circumstance, if any, connects your recollection of that machine, or your first recollection of that machine, with the year 1894? A. There was some talk of my taking charge of the machine, and at that time I went to Chicago and examined it.

1337 13 Q. State about when and where you examined said machine in Chicago with a view to taking the agency for the sale of the machine? A. I examined it in their factory in Chicago. It was in the year 1894.

14 Q. Do you remember the month or about what part of 1894 it was you examined the machine at the factory of the Remington-Sholes Typewriter Company in Chicago? A. I think it was in August; it may have been a little earlier or a little later, but am quite sure it was in August.

15 Q. After examining the machine at the factory of the Remington-Sholes Typewriter Company in Chicago, what next did you do as regards

1338 taking the agency for the sale of said machine? A. Arranged through my brother in law to meet Mr. Fay.

16 Q. What is your brother in law's name? A. Mr. Geer.

17 Q. Was a meeting arranged with Mr. Fay? A. It was.

18 Q. Did the meeting take place, and if so, where and who was present? A. The meeting took place in the Murray Hill Hotel, New York City. Mr. Geer came on from Chicago on purpose and together with myself met Mr. Fay.

19 Q. Please state briefly and so far as you recol-

lect what took place at that interview with Mr. Fay 1339
concerning the Remington Sholes typewriting machine and your taking the agency for the sale thereof? A. We talked over the different points and terms and conditions, but came to no definite conclusion.

20 Q. During the course of that interview with Mr. C. N. Fay at the Murray Hill Hotel was anything said by Mr. Fay as regards the name of the machine, Remington-Sholes, and as to what effect that name would have upon the public and aiding the sales of said machine?

Objected to as immaterial and irrelevant and as leading.

1340

A. Yes; there was a good deal said about the name being of assistance in selling the machine.

21 Q. What name, if any, or part of the name was referred to in that connection by Mr. Fay?

Same objection.

A. The word Remington.

22 Q. In considering the question and in talking about the use of the name Remington, was anything said by Mr. Fay as to whether the name Remington would aid in making the sales of that machine, and if so, to what extent?

Same objection.

1341

A. Yes; the name was spoken of as aiding the sale considerably; in fact, that was one of the principal reasons for taking the agency.

23 Q. Did the fact that the name Remington was used upon or in connection with that machine operate upon your mind or induce you to negotiate for the agency for the sale of that machine?

Same objection.

A. It did, to a considerable extent.

24 Q. Did you then regard it, and do you now regard it, as an advantage to have the right to use or

1342 to use the name Remington upon or in connection with the sale of typewriting machines?

Same objection.

A. I do consider it a great advantage to use that name.

25 Q. And why do you so consider it; is it because it is a well-known name and has been largely used in connection with typewriting machines?

Same objection.

A, Yes, it is well known and carries a great deal of weight with it, as many people will buy machines with that name, not knowing the difference
1343 between them.

26 Q. Explain just what you mean by "not knowing the difference between them," in your last answer?

Same objection.

A. Probably the best way I can explain would be to state that I have customers very frequently who purchase machines from me and buy whatever I tell them is a Remington, they not knowing the difference between the machines, but as they state they have heard of the Remington, and want that machine?

27 Q. In your business of selling typewriting
1344 machines, have you ever heard the Remington-Sholes, so called, referred to as a Remington machine, and if so, state what you have heard it called or designated in that regard?

Same objection.

A. I have heard it called the Remington, and by some the improved Remington.

28 Q. Speaking from your observation and experience as a seller of typewriting machines and from your knowledge and experience concerning the so-called Remington machine and the sale thereof and the Remington-Sholes machine or Rem-Sho machine,

what do you say as to the fact whether said Rem-Sho machine could be sold as or for a Remington typewriting machine? 1345

Same objection.

A. It could be so sold to parties not knowing the difference between the machines.

29 Q. Do you frequently have such parties as customers for the purchase of typewriting machines?

Same objection.

A. I do. Often customers come in and call for a typewriter, and I ask them what make they want. They will immediately ask me, pointing out the different machines, which one is the Remington. 1346 As that is better advertised, they seem willing to purchase that machine, but do not know what it looks like until I show them, or rather the difference between the Remington and other makes.

30 Q. Is it or not a fact, to your knowledge, that the so called Remington typewriter manufactured by Wyckoff, Seamans & Benedict is the best known typewriting machine and most largely sold of any typewriting machine in America?

Same objection.

A. There is no question but what it is the best known and most popular machine on the market. 1347

31 Q. State whether or not, to your knowledge, observation and experience, an unscrupulous agent or dealer could, in your opinion, palm off a Remington-Sholes machine or a Rem-Sho machine upon an unsuspecting or ignorant purchaser as and for a Remington typewriting machine?

Same objection.

A. That could be easily done and probably has been done.

1348 CROSS-EXAMINATION by Mr. Fisher:

32 x-Q. Did Mr. Fay give you the agency of the Remington-Sholes typewriter? A. We did not so arrange.

33 x-Q. Have you not known for many years past that the name Remington has been famous the world over, in connection with firearms, sewing machines and other articles?

Objected to as immaterial and irrelevant.

A. Yes, to a certain extent, but more especially in connection with typewriters, as that's my line of business.

34 x-Q. Do you not recall that Mr. Fay mentioned
1349 this fact at the time he talked with you in regard to the name Remington-Sholes? A. I don't remember any such conversation.

35 x-Q. It has been the practice of the manufacturers of the Remington Standard typewriter for many years past to mark their machines conspicuously upon the front cross-bar, adjacent to the keyboard, and upon the front of the base of the machines with the words "Remington Standard Typewriter," has it not? A. Yes.

36 x-Q. It has also been the practice of the manufacturers of the Remington Standard typewriter for many years past to mark upon the cross bar in front of the keyboard the words "Manufactured by
1350 Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A." has it not? A. Yes.

37 x-Q. It has also been the practice of the manufacturers of the Remington Standard typewriter to place upon the paper table and upon the top plate of the carriage of their machines a red seal with scalloped edges, and bearing the picture of a typewriting machine and the words "Standard Remington Typewriter," has it not? A. It has; but I might add that I never knew those words were on there before, and I have sold the machines for twenty years.

38 x-Q. It has also been the practice for many years of the manufacturers of the Remington

Standard typewriter to color their machines with 1351
black japan lined with gilt, has it not? A. It has.

39 x-Q. Now, do you think that if a person were familiar with the appearance of the Remington Standard typewriter, or with the fact that it was manufactured by Wyckoff, Seamans & Benedict, or with the fact that it bore the various marks that have been employed upon the Remington Standard machine such person would be apt to confound such machine with a different typewriter, differently colored and ornamented, bearing none of the marks to which I have referred, but bearing the name Remington-Sholes Company and the address, Chicago? A. If the purchaser knew all these facts he would know the difference, but there are very 1352
few that know those facts as you state them. I may say that a very small per cent. of people know where the Remington machine is made, although the address is given on the machine. I have often had customers ask me where the machine was made and they had used it for years, and I might add that if the salesmen were very anxious to make a sale and called the Rem-Sho the improved Remington, the purchaser would naturally take his word for it, not knowing the difference. I am satisfied that, I could sell the Rem-Sho for the Remington to a great many people, if I choose to do so.

40 x-Q. Do you believe that if an intending purchaser knew that the Remington machine was 1353
manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, such purchaser would be apt to buy a machine that bore the name Remington-Sholes Company, Chicago, thinking that he was getting a machine made by Wyckoff, Seamans & Benedict? A. Not if the purchaser was familiar with all those points, but very few are.

41 x-Q. Please answer the question as I have put it to you, and confine yourself to it? A. Not if he knew it.

42 x-Q. Please give me the name and address of any person and of every person who, to your knowl-

1354 edge, has bought a Remington-Sholes typewriter, believing at the time of doing so, that he was purchasing a Remington Standard typewriter? A. I don't know that I can give you any at present, it can be done.

Counsel moves to strike out the last part of the answer as not responsive to the question.

43 x-Q. How long have you been in business for yourself? A. About eighteen years.

44 x-Q. Have you at any time been in the employ of any typewriter company? A. I have not.

45 x-Q. Did you ever sell the Remington-Sholes typewriter, and if so, to what extent? A. I never
1355 sold it.

REDIRECT-EXAMINATION:

46 RD-Q. State whether or not from your observation and experience in the sale of typewriting machines, intending purchasers examine the name, plate or frame of the machine to ascertain by whom the machine is made or where it is manufactured? A. They do not examine these points. In fact, very few examine closely, but take the word of the party selling the machine.

47 RD-Q. State whether or not it is a fact that persons sometimes purchase typewriting machines by mail orders without seeing the machine previous to
1356 purchasing it? A. We sell a great many in that way.

RECROSS-EXAMINATION:

48 Re-x-Q. What part of a typewriting machine does a purchaser usually examine in buying such machines? A. They glance it over and look more for the work the machine does, and the general appearance of the machine. They don't go into details, as we tell them what machine it is and guarantee it.

49 Re-x-Q. How do purchasers distinguish the

Remington Standard Typewriter besides by the name 1357
usually? A. About the only other distinction is the general appearance.

50 Re-x-Q. Do intending purchasers usually examine various makes of machines and compare them before making purchases? A. Some do, but many do not. In the majority of sales the purchasers know the kind they want and only look at that kind.

(Signed) F. LYMAN BROWNE.

Adjourned to Saturday, July 22, 1899, at 10 A. M.

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1358

NEW YORK, July 22, 1899, 10 A. M.

Met pursuant to adjournment.

Present—Counsel as before.

Complainant's counsel offers in evidence a notice mailed to the Remington-Sholes Typewriter Company, 127 Rees street, Chicago, dated January 8, 1896, and the same is filed in evidence and marked "Complainant's Exhibit, Notice to Remington-Sholes Typewriter Company, Jan. 8, 1896."

1359

Complainant's counsel next offers in evidence a notice mailed to the Howe Scale Company of 1886 and a registry return receipt, bearing date June 25, 1897, and the same are filed in evidence and marked "Complainant's Exhibit Notice to Howe Scale Company, June 21, 1897."

Complainant's counsel next offers in evidence an exemplified copy of amendments to the articles of association of The Z. G. Sholes Company increasing the capital stock thereof from $10,000 to $100,000, and the same is filed in evidence and marked "Complainant's Ex-

1360 hibit Amendment to the Articles of Association, filed May 9, 1893."

Objected to as immaterial and irrelevant.

Complainant's counsel offers in evidence exemplified copy of the articles of association of The Z. G. Sholes Company, and the same are filed in evidence and marked "Complainant's Exhibit Articles of Association of The Z. G. Sholes Company."

Same objection.

Complainant's counsel next offers in evidence an exemplified copy of the agreement and pro-
1361 ceedings consolidating the Standard Typewriter Company with the Remington Standard Typewriter Manufacturing Company, forming a corporation under the name Wyckoff, Seamans & Benedict, filed in Herkimer County Clerk's office May 25, 1892, and the same are filed in evidence and marked "Complainant's Exhibit Wyckoff, Seamans & Benedict Articles of Incorporation, filed in Herkimer Co."

Complainant's counsel next offers in evidence exemplified copy of the articles of incorporation of Standard Typewriter Manufacturing Company, filed in the Herkimer County Clerk's office on April 12, 1886, and the same is filed in
1362 evidence and marked "Complainant's Exhibit Articles of Incorporation of Standard Typewriter Manufacturing Company, filed in Herkimer Co."

Complainant's counsel next offers in evidence exemplified copy of articles of incorporation of the Standard Typewriter Company, filed in the New York County Clerk's office December 7, 1891, and the same are filed in evidence and marked "Complainant's Exhibit The Standard Typewriter Company Articles of Association, filed in New York Co. Dec. 7, 1891."

Complainant's counsel next offers in evidence

a certified copy of certificate of registration 1363
of the name "Remington" in the United States Patent Office, bearing date October 23, 1888, No. 15,960, and the same is filed in evidence and marked "Complainant's Exhibit Certificate of Registration of name 'Remington' as a Trade-mark."

Complainant's counsel next offers in evidence the original assignment by Remington Standard Typewriter Manufacturing Company to Wyckoff, Seamans & Benedict of the trade-mark "Remington," No. 15,960, and the same is filed in evidence and marked "Complainant's Exhibit Assignment Trade-mark Remington."

It is agreed between counsel that a duly 1364
certified copy of said assignment may be substituted for and used instead of the original assignment.

Complainant's counsel next offers in evidence the original assignment from Remington Standard Typewriter Company to Wyckoff, Seamans & Benedict of the Brooks Patent No. 202,923 of April 30, 1878, and the same is filed in evidence and marked "Complainant's Exhibit Assignment of Brooks Patent No. 202,923 to Wyckoff, Seamans & Benedict.

Objected to as immaterial and irrelevant, but
it is consented that a certified copy may be sub 1365
stituted for the original.

Complainant's counsel next offers in evidence the following papers: Agreement between the Typewriter Company and C. A. Washburn, April 26, 1878; agreement between C. Latham Sholes, Amos Densmore and James Densmore, November 20, 1875; arrangements by and between E. Remington & Sons, the Typewriter Company and Fairbanks & Company for the agency for the sale of typewriters, July 6, 1878; patent assignment from Clough and Jenne to

1366 the Typewriter Company, December, 1877; patent assignment of C. Latham Sholes and Matthias Schwalbach to the Typewriter Company, August 19, 1876; lease from the Typewriter Company to Yost and Luxton in the name of Densmore, Yost & Co., general agents, January 18, 1875; sale and assignment W. J. Barron to T. W. Company, January 28, 1879; patent assignment of W. J. Barron to the Typewriter Company, January 17, 1878; patent assignment Clough and Jenne to Typewriter Company, February 12, 1876; and patent assignment of E. R. Barron, August 6, 1878.

1367 The foregoing papers are marked "Complainant's Exhibit Title Papers Nos. 1 to 10" inclusive.

Defendant's counsel objects to the introduction of all and singular of the above exhibits upon the ground that the same are immaterial, irrelevant and incompetent, but waives formal proof of the execution of said papers.

Complainant's counsel next offers in evidence original assignment from Zalmon G. Sholes to George E. Smith, dated February 17, 1893, and the same is filed in evidence and marked "Complainant's Exhibit Sholes Assignment to Smith."

1368 Complainant's counsel next offers in evidence the original agreement between Sholes, Smith, Wadhams and Camp, dated April 8, 1893, and the same is filed in evidence and marked "Complainant's Exhibit Agreement between Sholes, Smith, Wadhams and Camp."

Same objection.

Complainant's counsel offers in evidence the photograph of The Z. G. Sholes machine identified and proven by Mr. Sholes, and the same is filed in evidence and marked "Complainant's Exhibit Photograph Z. G. Sholes Machine."

Complainant's counsel next offers in evidence 1369
the paragraph relating to typewriting machines on page 63 of the Report of the Commissioner of Patents, December 31, 1895, beginning with the words "Typewriting Machines" about the centre of the page and including all that part of said page preceding the word "textiles," and the same is marked "Complainant's Exhibit Report of Commissioner of Patents."

The introduction of the above exhibit is objected to by defendant's counsel as immaterial and irrelevant, but no objection is made to the said exhibit on account of the report not being certified by the Commissioner of Patents.

1370

Complainant's counsel next offers in evidence a Prospectus issued by the Remington-Sholes Syndicate, Limited, to be incorporated as a company, and to act as sole agents in the United Kingdom of Great Britain, &c., for the sale of the Rem-Sho typewriter, and the same is filed in evidence and marked "Complainant's Exhibit Remington-Sholes Syndicate Prospectus."

It is admitted by defendant's counsel that the Mr. Franklin Remington referred to in said prospectus is the same Mr. Franklin Remington who has been and now is connected with the Remington Sholes Company and is its general manager, and that the statement therein that he 1371
will join the Board after allotment was put into said prospectus with his consent and approval; but defendant's counsel objects to the introduction of the exhibit as immaterial and irrelevant.

Complainant's counsel next offers in evidence a photograph of a sign or advertisement of the Rem-Sho typewriter manufactured by the Remington-Sholes Company of Chicago, and the same is filed in evidence and marked "Complainant's Exhibit Sign Advertisement of Rem-Sho Machine."

1372 It is admitted by defendant's counsel that said photograph is a correct reproduction of a sign which was put up and publicly displayed in Chicago, Ill., as an advertisement of the Rem-Sho typewriter.

MINNA R. POLLOCK, a witness called on behalf of the complainant, having been first duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, residence, occupation and whether you are of lawful age? A. Minna R. Pollock; residence, 57 East One Hundred and Fifth
1373 Street, New York City; occupation, translator and copyist. I am of lawful age.

2 Q. Do you understand or are you acquainted with the German languagel A. Yes, I am.

3. Q. Please examine the publication *Schreibmaschinen-Zeitung*, and particularly the advertisements of the machines designated the Remington and Remington-Sholes on page 59 of said publication, and say whether or not you have translated the advertisement relating to the Remington machine and whether such translation is a correct translation of said advertisement?

Defendant's counsel objects to this question
1374 and any answer that may be given thereto and all other questions and answers relating to the publication and advertisement referred to in the last question, and gives notice that he will move to strike out all testimony in respect thereto, and for the following reasons; the testimony called for is immaterial, irrelevant and incompetent, and it has not and cannot be proven that any statements or advertisements appearing in said publication were made by authority or with the sanction of the defendant in this cause, or of the Remington-Sholes Company, or its

predecessors, or of any one having authority to act for them, or either of them, in such matters. 1375

A. Yes.

4 Q. Is there any difference between the advertisement of the Remington machine, so-called, and the Remington-Sholes machine, which appears directly under it, except in one case it is Remington and in the other Remington-Sholes?

Same objection.

A. There is not any difference; they are word for word the same.

5 Q. I hand you two German newspapers as follows: *General Anzeiger* and *Hannoverscher Anzeiger*. Please state whether you have translated any advertisements in said newspapers relating to the Remington-Sholes writing machine, and if so, whether the translations which you have made of the same, and which are pinned to said papers, are correct translations of said advertisements? 1376

Same objection.

A. Yes.

Complainant's counsel offers in evidence said publications *Schreibmaschinen-Zeitung*, *General Anzeiger* and *Hannoverscher Anzeiger*, and the same are marked "Complainant's Exhibit Schreibmaschinen-Zeitung," and "Complainant's Exhibit General Anzeiger" and "Complainant's Exhibit Hannoverscher Anzeiger." 1377

Defendant's counsel objects to the introduction of the exhibits for the same reasons as are given in his objections to Q. 3 of this deposition.

Cross-examination waived.

(Signed) MINNA R. POLLOCK.

1378 Defendant's counsel admits that it could be proven by complainant that Mr. Franklin Remington, who is the manager of the Remington-Sholes Company, was in Montreal, Canada, on June 28 and 29, 1899, and that he attended at a meeting of Students and Professors of the Montreal Business College on the afternoon of June 28th, together with Mr. C. H. McGurrin, who at such meeting operated a Remington-Sholes typewriting machine, but defendant's counsel objects to all such testimony as immaterial and irrelevant.

Defendant's counsel admits that on July 7, 1899, Mr. F. Remington, who is general manager
1379 of the Remington-Sholes Company, wrote a letter to Messrs. Wyckoff, Seamans & Benedict, which said letter is offered in evidence by counsel for complainant and is marked "Complaint's Exhibit Remington Letter July 7, 1899". Defendant's counsel admits that said letter was written in reply to a communication as stated in a copy of a letter dated July 8, 1899, which is introduced in evidence for the purpose of explaining the reason for Mr. Remington's writing the letter of July 7, 1899.

The said copy of letter is offered in evidence and marked "Wyckoff, Seamans & Benedict Letter, July 8, 1899."

1380 Defendant's counsel objects to the introduction of said exhibits for the reason that it is immaterial and irrelevant.

Complainant's counsel offers in evidence two Remington-Sholes typewriting machines, manufactured by the Remington-Sholes Typewriter Company, of Chicago, prior to the year 1897, and the same are filed in evidence and marked "Complainant's Exhibits Remington-Sholes Typewriter Nos. 1 and 2."

Defendant's counsel admits that said machines were manufactured by the Remington-Sholes Typewriter Company at the time stated,

and that they are substantially correct represen- 1381
tations of the machines at such time manufactured and sold by said company.

Defendant's counsel admits that the notice to the Remington-Sholes Company dated January 8th, 1896, and the notice to the Howe Scale Company dated June 21, 1897, were duly directed to said companies, the postage paid thereon and duly deposited in the Post Office at New York City, and that the postal receipts attached to said notices were executed by representatives of the respective companies.

Defendant's counsel waives formal proof of the execution of the assignment of the Remington Standard Typewriter Manufacturing Com- 1382
pany to Wyckoff, Seamans & Benedict, of Trade-mark Remington No. 15,960 and of the Brooks patent No. 202,923.

Complainant's counsel offers in evidence photo-lithographic copy of U. S. Letters Patent issued to L. S. Crandall, November 23, 1875, No. 170,-239, and the same is filed in evidence and marked "Complainant's Exhibit Crandall Patent No. 170,239."

Complainant's counsel next offers in evidence photo-lithographic copy of Letters Patent of the United States issued to William McK. Jenne, as assignor to Remington Standard Typewriter Manufacturing Company, March 18, 1890, and 1383
the same is filed in evidence and marked "Complainant's Exhibit Jenne patent No. 423,-772."

Complainant's counsel next offers in evidence photo-lithographic copy of U. S. Letters Patent issued to Sholes, Glidden & Soule, July 14, 1868, No. 79,868, and the same is filed in evidence and marked "Complainant's Exhibit Sholes, Glidden & Soule patent No. 79,868."

Complainant's counsel next offers in evidence photo-lithographic copy of U. S. Letters Patent issued to William K. Jenne, the typewriter

1384 company being the assignee, September 21, 1886, No. 349,349, and the same is filed in evidence and marked "Complainant's Exhibit Jenne Patent No. 349,349."

Complainant's counsel next offers in evidence photo-lithographic copy of U. S. Letters Patent issued to Philip T. Dodge, assignor to E. Remington & Sons, July 21, 1885, No. 322,810, and the same is filed in evidence and marked "Complainant's Exhibit Dodge Patent No. 322,810."

Complainant's counsel next offers in evidence photo-lithographic copy of U. S. Letters Patent issued to Sholes & Glidden, assignors to the typewriter company, February 12, 1878, No.
1385 200,351, and the same is filed in evidence and marked "Complainant's Exhibit Sholes & Glidden Patent No. 200,351."

Complainant's counsel next offers in evidence photo lithographic copy of U. S. Letters Patent issued to C. L. Sholes, assignor to the typewriter company, August 27, 1878, No. 207,558, and the same is filed in evidence and marked "Complainant's Exhibit Sholes Patent No. 207,558."

Complainant's counsel next offers in evidence photo lithographic copy of U. S. Letters Patent issued to Sholes & Schwalbach, assignors to the typewriter company, September 18, 1876, No.
1386 182,511, and the same is filed in evidence and marked "Complainant's Exhibit Sholes & Schwalbach Patent No. 182,511."

Complainant's counsel next offers in evidence photo-lithographic copy of U. S. Letters Patent issued to C. L. Sholes, assignor to the Typewriter Company, January 22, 1878, No. 199,382, and the same is filed in evidence and marked "Complainant's Exhibit Sholes Patent No. 199,382."

Complainant's counsel next offers in evidence photo-lithographic copy of U. S. Letters Patent issued to W. J. Barron, assignor to the Type-

writer Company, January 22, 1878, No. 199,494, and the same is filed in evidence and marked "Complainant's Exhibit Barron Patent No. 199,494." 1387

Complainant's counsel next offers in evidence photo lithographic copy of U. S. Letters Patent issued to E. R. Barron, assignor to the Typewriter Company, August 13, 1878, No. 207,002, and the same is filed in evidence and marked "Complainant's Exhibit Barron Patent No. 207,002."

Complainant's counsel next offers in evidence photo-lithographic copy of U. S. Letters Patent issued to Charles H. Stanton, May 29, 1877, No. 191,382, and the same is filed in evidence and marked "Complainant's Exhibit Stanton Patent No. 191,382." 1388

Complainant's counsel next offers in evidence photo-lithographic copy of U. S. Letters Patent issued to Samuel T. Ryder, Sept. 19, 1876, No. 182,289, and the same is filed in evidence and marked "Complainant's Exhibit Ryder Patent No. 182,289."

Complainant's counsel next offers in evidence photo lithographic copy of U. S. Letters Patent issued to C. L. Sholes August 29, 1871, No. 118,491, and the same is filed in evidence and marked "Complainant's Exhibit Sholes Patent No. 118,491." 1389

Complainant's counsel next offers in evidence photo lithographic copy of U. S. Letters Patent issued to C. L. Sholes, assignor to The Typewriter Company, August 27, 1878, No. 207,557, and the same is filed in evidence and marked "Complainant's Exhibit Sholes Patent No. 207,557."

Complainant's counsel next offers in evidence photo-lithographic copy of U. S. Letters Patent issued to Clough & Jenne, assignors to The Typewriter Company, January 15, 1878, No. 199,263, and the same is filed in evidence and

1390 marked "Complainant's Exhibit Clough & Jenne Patent No. 199,263."

Complainant's counsel next offers in evidence photo-lithographic copy of Letters Patent issued to Sholes, Glidden & Soule, June 23, 1868, No 79,265, and the same is filed in evidence and marked "Complainant's Exhibit Sholes, Glidden & Soule Patent No. 79,265."

Complainant's counsel next offers in evidence a typewriting machine such as has heretofore been manufactured and sold by Wyckoff, Seamans & Benedict and known as the Remington No. 2 typewriter, and the same is put in evidence and marked "Complainant's Exhibit

1391 Remington No. 2 Typewriter."

Complainant's counsel next offers in evidence a typewriting machine manufactured and sold by Wyckoff, Seamans & Benedict, known as a Remington No. 6 typewriter, and the same is put in evidence and marked "Complainant's Exhibit Remington No. 6 Typewriter."

In so far as many of the foregoing patents, which have been offered in evidence, are uncertified, defendant's counsel waives certification thereof and consents that the same may be used at the hearing of this cause with the same force and effect as if duly certified by the Commissioner of Patents, but defendant's counsel ob-

1392 jects to each and every of said patents which have been offered in evidence as immaterial and irrelevant.

JOHN VOLK, a witness called on behalf of the complainant, having been duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. State your name, age, residence and occupation? A. John Volk; I live at 181 Fifty first street, Brooklyn; I am editor of the *Nordlyset*, published at 28 State street, New York; I am fifty-six years of age. I am a native of Denmark.

2 Q. Do you understand and are you acquainted with the Danish language, and if so, please state what opportunities you have had in acquiring a knowledge of the Danish language? A. I went to school in Denmark up to my fourteenth year. I continue to read and write the Danish language up to the present date. 1393

3 Q. Up to what time did you reside in Denmrak? A. Up to 1862, but I have visited Denmark several times since.

4 Q. Please examine the two publications which I hand you, and which appear to be in the Danish language, and state what said publications are? A. One is the official paper of the Danish Government, *Berlinske Politiske og Advertissements-Tidende;* in English it means Berlinske Political Advertising Tiding. The other one is an illustrated family paper, published in Copenhagen, called *Hver 8 Dag;* in English it means Every Eighth Day. 1394

5 Q. If you know, please state where said two publications are published and circulated? A. In the City of Copenhagen, Denmark. They are circulated all over the country, of course, that is throughout Denmark. The *Berlingske Political Advertising Tiding* has a very large circulation throughout Denmark.

6 Q. I call your attention to an advertisement on the first page of the newspaper called *Berlingske Political Advertising Tiding*, and which advertisement has at the head thereof the name "F. Remington, Jun." and ask you to say whether or not you are able to read and translate said advertisement? A. Yes, I can both read it and translate it into English. 1395

7 Q. Please examine the translation of said advertisement headed "F. Remington, Jun." and say whether or not the translation pinned to said newspaper and certified to by Steen F. Bille is a correct translation of said advertisement? A. It is correct.

8 Q. I call your attention to a notice headed "Mr. Remington" on page 208 of the publication *Every*

1396 *Eighth Day*, and ask you to state whether or not you have read said notice and understand the contents thereof? A. Yes, sir; I have read and understand it.

9 Q. I call your attention to a translation of said notice purporting to have been made by Steen A. Bille, and ask you whether you have read said notice and whether said translation purporting to have been made by said Bille is a correct translation of said notice appearing on page 208 of said publication? A. It is correct.

Counsel for complainant offers said two publications in evidence, and they are marked "Complainant's Exhibit Berlingske Political Advertising Tid-
1397 ing," and "Complainant's Exhibit Every Eighth Day."

10 Q. Do you or not receive from time to time copies of these various publications? A. I do occasionally.

(Signed) JNO. VOLT.

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Defendant's counsel makes the same objection to all of the foregoing questions and answers as was made to Q. 3 of the deposition of the witness Minna R. Pollock.

Complainant's counsel offers in evidence a
1398 catalogue of the Remington-Sholes Company advertising the Rem-Sho typewriter, on which the name of Charles H. McGurrin is stamped and is represented to be the agent of said company at Kalamazoo, Michigan, and the same is filed in evidence and marked "Complainant's Exhibit Remington-Sholes McGurrin Catalogue."

Complainant's counsel next offers in evidence a certified copy of U. S. Letters Patent No. 629,-438, dated July 25, 1899, issued to Charles N. Fay, of Chicago, Illinois, together with the original specification, petition and oath, and the same are filed in evidence and marked "Com-

plainant's Exhibit Fay Patent No. 629,438 and Original Application." 1399

Defendant's counsel objects to the catalogue and patent last offered in evidence as immaterial and irrelevant.

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UNITED STATES CIRCUIT COURT,

DISTRICT COURT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

AGAINST 1400

THE HOWE SCALE COMPANY OF 1886.

TESTIMONY taken on behalf of complainant before Lynden Evans, a notary public, in and for the County of Cook and State of Illinois, Special Examiner by consent under and pursuant to the annexed stipulation, at the office of Josiah McRoberts, No. 107 Dearborn street, Chicago, on the 24th day of October, 1899, at 10 o'clock A. M.

APPEARANCES: 1401

JOSIAH MCROBERTS, for Complainant.
GEORGE P. FISHER, Esq., Counsel for Defendant.

GEORGE E. SMITH, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. McRoberts:

1 Q. State your name, age, residence and occupation? A. George Edmund Smith; twenty years and

1402 ten months; 1323 Lill avenue, Chicago, Illinois; salesman for Wyckoff, Seamans & Benedict.

2 Q. As salesman for Wyckoff, Seamans & Benedict, what classes of goods do you sell? A. The Remington Standard typewriter, furniture, supplies, tabulators, Edison mimeograph articles.

3 Q. As such salesman have you recently sold a Remington typewriting machine to one C. R. Springer, 6301 Wentworth avenue, Chicago, Illinois, and if so, about what date? A. I have; it was about the first week in September, 1899.

4 Q. When you called upon Mr. Springer, please state the substance of your conversation with him?

1403 Objected to by counsel for defendant, as incompetent, irrelevant and immaterial.

A. I presented my card and said: "I believe you wrote us in regard to purchasing a machine." I asked him if he had a machine on trial. He said he had, and that it was the Hammond. He seemed to expect that I came in answer to his letter, and from then it was purely a matter of business.

5 Q. What, if anything, did he say in response to your remark that you believed he had written a letter in regard to purchasing a machine?

Same objection by counsel for defendant.

1404 A. I don't remember whether he made any direct answer, but he gave me to understand that he was in the market for Remington machines, and thought that it was perfectly natural that I came.

6 Q. Did he appear to recognize the fact that you, as a representative of Wyckoff, Seamans & Benedict, had called upon him in response to some letter written by him?

Same objection by counsel for defendant.

A. Yes, sir.

7 x-Q. Did you sell him a machine, and if so what description or character was it? A. I sold him a Remington No. 6.

CROSS-EXAMINATION by Mr. Fisher: 1405

1 x-Q. Did you have any intimation at the time you called upon Mr. Springer, as to the kind of machine that he wished to purchase? A. I did not.

2 x-Q. How did you happen to go to see Mr. Springer? A. A note from the house saying that he was in the market for a machine.

3 x-Q. A note from what house? A. From Wyckoff, Seamans & Benedict, from the Chigaco office.

4 x-Q. Did Mr. Springer tell you what kind of a machine he wished to purchase? A. He said he wished to purchase a machine, the Remington No. 6, with type most popular with telegraph operators, which is the medium Roman.

5 x-Q. Did the card which you presented to Mr. 1406
Springer, when you first called upon him, bear the name Wyckoff, Seamans & Benedict? A. Yes, sir.

6 x-Q. Is the card that you have handed me the same as the card that you presented to Mr. Springer? A. It is.

Defendant's counsel offers in evidence the card referred to by the witness, and the same is marked "Defendant's Exhibit Wyckoff, Seamans & Benedict Card, Chicago-Office."

(Signed.) GEORGE E. SMITH.

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1407

SILAS W. CRANDALL, a witness called on behalf of the complainant, of lawful age, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. McRoberts:

1 Q. Mr. Crandall, you have already given a deposition in this case, have you not? A. Yes, sir.

2 Q. Please look at the letter which I now show you, purporting to have been written to the Remington Typewriter Company, Chicago, Illinois, by

1408 W. K. Noble, and state what you know about it, if anything? A. I received this letter a day or two after the date, and forwarded it in due course of mail to Mr. Donnelly, the attorney for the complainant in this case; it came to our house in due course of mail and was placed on my desk with other letters from correspondents.

3 Q. To what house do you refer as "our house"? A. Wyckoff, Seamans & Benedict, Chicago.

4 Q. Prior to the receipt of this letter from Mr. Noble, had the Chicago office of Wyckoff, Seamans & Benedict had any correspondence or business relations with him? A. It had not.

5 Q. Do you know of any other source and corre-
1409 spondence and business relations from which Mr. Noble could obtain such information as would lead him to address the Chicago office of Wyckoff, Seamans & Benedict as "Remington Typewriter Co., Chicago, Ill."? A. I do not.

6 Q. Is this letter from Mr. Noble in the condition in which it was when received by you in due course of mail? A. Yes.

The letter identified by the witness is offered in evidence, and is marked "Complainant's Exhibit Noble Letter."

7 Q. Please look at the envelopes and letter which I now hand you, the envelopes being directed re-
1410 spectively "Remington Typewriter Company, 144 Madison Street, Chicago, Ill., C/o Wyckoff, Seamans & Benedict," bearing the letterhead of the Remington-Sholes Company, Chicago, and "Remington Typewriter Co , 48 Lake Street, City," bearing the letterhead of the Postal Telegraph Cable Company; and the letter addressed "Remington Typewriter Co., 48 Lake Street, Chicago, Ill., purporting to come from C. R. Springer, and state what you know about them if anything? A. We received the envelope posted Chicago, August 25th, 1.30 P. M., 1899, bearing the card of Remington-

Sholes Company, addressed "Remington Typewriter 1411
Company," containing letter of C. R. Springer and latter enclosed in envelope addressed "Remington Typewriter Co.," postmarked August 24, 12 P. M., with pencil writing thereon, signed Hobbs, the morning of the 26th of August with other mail, in the first delivery, and the contents were received by me, and duly noted; our salesman, Mr. Smith, was instructed to call and see Mr. C. R. Springer, 6301 Wentworth avenue, city, and respond in person to his letter; and the letter itself and envelope addressed by Mr. Springer and the envelope bearing the card of the Remington-Sholes Company heretofore mentioned, was transmitted on the same day by mail to Mr. Donnelly, the attorney for the com 1412
plainant in this case.

8 Q. Are these envelopes and letter in same condition in which they were when received by you in the due course of mail? A. Except by opening of the two envelopes; the yellow envelope had been fastened with metal fasteners, which were torn open in order to get at the contents.

9 Q. Please state what you know about the pencil writing which appears on the face of the envelope bearing the business card of the Postal Telegraph Cable Company, which you have just identified? A. The pencil writing reads: "Second floor Champlain Bldg., opened by mistake with other mail. Hobbs, Mgr." I have seen Mr. Hobbs' handwriting, and 1413
this is similar and I believe in the handwriting of, and was written by Mr. Hobbs, the manager of the city sales office of the Remington-Sholes Typewriter Company, of Chicago.

**The envelopes and letter just identified by the witnesses are now offered in evidence, and are marked respectively "Complainant's Exhibit Remington-Sholes Company Envelope, August 25, 1899"; "Complainant's Exhibit C. R. Springer Envelope and Letter, August 24, '99."**

1414 10 Q. Please look at the letter and envelope which I now show you, purporting to be a letter written by W. T. Field to Mr. Kellogg, the envelope being directed "Remington Typewriter Co., City, Mr. Kel'ogg," and state what you know about them, if anything.

A. The letter enclosed in envelope referred to in the question was received by us the 22d of August last; the envelope being fastened with metal fasteners, and on the back written with pencil the following, "Opened by Remington-Sholes Co.," and on the front of the envelope the following, "Try Wyckoff, Seamans & Benedict, Madison Street, City." I recognize the writing on the front of the envelope
1415 underneath the address of "Remington Typewriter, City," as the same handwriting seen on several envelopes heretofore offered in evidence. The letter itself was beyond doubt intended for our Mr. Paul Kellogg, a salesman, who is well acquainted with Mr. W. T. Field, agent of Ginn & Company, publishers, 378 Wabash avenue, who signed the letter; the letter and envelope were shown our Mr. Paul Kellogg, and he called on Mr. Field in response to the letter and the same day the envelope and letter in the condition it now is was transmitted in due course of mail to Mr. Donnelly, the attorney for the complainant in this case.

11 Q. Are the letter and envelope in the same con-
1416 dition as they were when transmitted to you by the due course of mail? A. Yes, excepting that the envelope is torn open where it was fastened with metal fasteners.

12 Q. State what you know about the writing on the back of the envelope? A. I recognize the signature of "Remington-Sholes" as the same as appeared on letters, papers and documents offered in evidence at the former session.

The letter and envelope identified by the witness are now offered in evidence and marked

"Complainant's Exhibit Ginn & Company Letter and Envelope, August 21, '99." 1417

CROSS-EXAMINATION by Mr. Fisher:

1 X-Q. How long has it been your practice to send letters or envelopes addressed similarly to those just offered in evidence, to Mr. Donnelly? A. I can't say that we have had a practice; whenever mail addressed in this way has come into our hands and we remembered the fact that they might have some possible bearing on the case, wherein we were complainants against the Remington-Sholes Company, we have taken pains, especially where the mail had been opened by the defendant in the case, to forward the same to Mr. Donnelly. We have not made a practice of sending even a small percentage of the mail addressed our house as the Remington Typewriter Company, to Mr. Donnelly. 1418

(Signed) S. W. CRANDALL.

UNITED STATES OF AMERICA, }
Northen District of Illinois, } ss.:

I, LYNDEN EVANS, a Notary Public, in and for the County of Cook, in the State of Illinois, in the district aforesaid, do hereby certify that the foregoing deposition of Silas W. Crandall and George E. Smith, and each of them, were taken by and before me, pursuant to the annexed stipulation and by the agreement and consent of the parties, at the times and places therein specified; that the parties to said cause were present at the taking of the same, the complainants, by their counsel, Josiah McRoberts, and the defendants, by their counsel, George P. Fisher, as therein appeared; that said testimony is taken on behalf of the complainants, to be used upon the hearing of a certain cause now pending in the Circuit Court of the United States for the District of Vermont, wherein Wyckoff, Seamans & 1419

1420 Benedict are complainants, and the Howe Scale Company of '86 is defendant; that before deposing the said Silas W. Crandall and George E. Smith, and each of them, were by me duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that these depositions were severally taken down under my direction by a skilled typewriter from their statements, respectively, as therein appears before me.

And I further certify that I am neither attorney, nor of counsel for any of the parties in said depositions or caption named, and am in no wise interested in the result of said cause.

In testimony whereof, I have hereunto set my
1421 hand and notarial seal, this 24th day of October, A. D. 1899.

LYNDEN EVANS,
Notary Public,
Illinois.

[NOTARY'S SEAL.]

{Canceled 10 cent Revenue Stamp.}

1422

1423

UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

vs.

THE HOWE SCALE COMPANY OF 1886.

1424

TESTIMONY taken on behalf of complainant, before Wirt E. Humphrey, United States Commissioner and a Notary Public, in and for the County of Cook and State of Illinois, acting as Special Examiner under and pursuant to the annexed stipulation, at his office, Room 701, 115 Dearborn street, Chicago, Illinois, on the 24th day of November, A. D. 1899, at 10 o'clock A. M.

APPEARANCES:

JOSIAH MCROBERTS, Esq., for Complainant, and GEORGE P. FISHER, Esq., for Defendant.

1425

WILLIAM A. SMITH, of lawful age, a witness produced on behalf of complainant, after being duly cautioned and sworn to testify the whole truth, did testify as follows:

DIRECT-EXAMINATION by Mr. McRoberts:

1 Q. Please state your name, age, residence and occupation? A. William A. Smith; 27 years; 138 Leavitt street; clerk for the William D. Gibson Company, 25 N. Clinton street, Chicago, Illinois.

2 Q. Please state what duties you perform? A. Shipping clerk is one of them.

1426 3 Q. As shipping clerk do you have charge of the receipt and delivery books? A. Just the delivery books.

4 Q. Please look at the book which I now show you and state what it is? A. The city delivery book of the William D. Gibson Company.

5 Q. Please look at the receipt on the page which I now indicate and state if the parts written in by pen are in your handwriting? A. They are.

Counsel for complainant now states that it is not possible to offer the book just identified by the witness in evidence, and, therefore, requests counsel for the defendant to permit a copy of the entry in the book just referred to to be made
1427 a part of the record and to admit that it is a correct copy of said entry.

Counsel for defendant consents to the above, and the following entry is made on the record, the parts of said entry there are in the handwriting of the witness, being indicated herein by underscoring, the balance being the ordinary printed form of such receipts:

CHICAGO, Nov. 17, 1899.

*Remington-Sholes Co.*

No. *Madison St.*
*bet. Clark & Dearborn.*

1428 Received from the William D. Gibson Co. the following goods, in good order, with bill:

1 *typewriter*
1 *stand and cover*

(across the face of said receipt is written in pencil) "W. S. & B. BAYES."

6. Q. If you saw the machine which was sent with this receipt, please state how it was marked, if at all, to indicate the character or type of machine?

Counsel for defendant objects to the question 1429
as calling for secondary evidence, the machine itself being the best evidence.

A. Remington.

That is, the cover was marked "Remington." I did not see the machine itself, only the cover.

CROSS EXAMINATION by Mr. Fisher:

1 x-Q. What is the business of the W. D. Gibson Company? A. Manufacturers of springs.

2 x-Q. How long have you been in the employ of the Gibson Company? A. Five and one-half years.

3 x Q. Were you ever connected with any typewriting company as salesman or otherwise? A. No. 1430

4 x-Q. Are you acquainted with any one connected with Wyckoff, Seamans & Benedict? A. No.

5 x-Q. Does the Gibson Company handle or deal in typewriting machines? A. No.

6 x-Q. Did you ever have occasion before to bill a typewriting machine to any one? A. No.

7 x-Q. Prior to the time when you made this entry in the city delivery book of William D. Gibson Co., did you know of a concern of Wyckoff, Seamans & Benedict, or that there was such a concern in existence? A. No.

8 x-Q. How did you happen to make this entry in the city delivery book of the Gibson Co.? A. The machine was on trial, I believe, and they decided to 1431
send it back and asked me to return it, and I made out the book and gave it to the express wagon and sent it over there.

9 x-Q. Did any one direct you as to where you were to send the machine? A. No.

10 x-Q. Where did you get the address and name under which you made out the delivery bill? A. I had seen the name somewhere, I don't know where. In passing along Madison street I had noticed the name Remington.

11 x-Q. You noticed this name Remington Company on the store windows of the Madison street

1432 store? A. I believe it was on the window, as far as I know.

12 x-Q. Was there anything on the cover of the machine beside the word "Remington"? A. I don't know.

13 x-Q. If I understand you correctly, you had seen the name "Remington Company" on the Madison street window and this led you to give the address upon the delivery bill as "Madison St."? A. Yes.

14 x-Q. Where did you hear of the Remington-Sholes Company? A. I believe we gave them prices on some goods at one time.

15 x-Q. Did you ever bill any goods to the Rem-
1433 ington-Sholes Company? A. Not that I remember.

16 x-Q. Do you recall in what part of the city the Remington-Sholes Company had its factory or store? A. I did not know prior to the delivery of this typewriter.

17 x-Q. Did you yourself quote prices to the Remington-Sholes Company? A. No.

18 x-Q. How long prior to November 17, 1899, was it that the Gibson Co. quoted prices to the Remington-Sholes Co.? A. I don't know.

19 x-Q. Can you state approximately? A. No, I cannot.

20 x-Q. How do you know that the Gibson Co. ever quoted prices to the Remington-Sholes Co.? A.
1434 I don't know any further than I have a recollection that we did.

(Signed) W. A. SMITH.

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JOHN S. BAYES, of lawful age, a witness produced on behalf of the complainant, after being duly cautioned and sworn to testify the whole truth, did testify as follows:

DIRECT-EXAMINATION by Mr. McRoberts:

1 Q. Please state your name, age, residence and occupation? A. John S. Bayes; 31 years; Chicago,

Illinois; manager of the sales department of Wyckoff, 1435
Seamans & Benedict.

2 Q. You have given a deposition in this case, have you not? A. Yes.

3 Q. Please look at the receipt book of the William D. Gibson Company, which I now show you, and which has just been identified by Mr. W. A. Smith, and state what you know about it, if anything? A. On the evening of November 17, 1899, a Remington machine with a stand and cover were returned by an expressman to the office of Wyckoff, Seamans & Benedict, 144 Madison street. The expressman came to me with the delivery book and asked me whether these were our goods, stating that he had just undertook to deliver to the Rem- 1436
ington-Sholes Company these goods and that they had refused to receive them. He said, further, that they had directed him to the store of Wyckoff, Seamans & Benedict. I recollected that I had taken the order of the William D. Gibson Company for a typewriting machine and stand two or three days prior, and receipted for them by writing "W., S. & B. Bayes" in pencil across the face of the receipt. I also knew that these goods belonged to us from the fact that the expressman had a letter from the W. D. Gibson Company explaining why they were returning the goods.

4 Q. Please look at the postal card and envelope which I now show you and state what you know 1437
about them? A. That was delivered to us by mail—the envelope and postal card in it.

Counsel for complainant offers in evidence the envelope and postal card just identified by the witness and the same are marked "Complainant's Exhibit Remington-Sholes Envelope, post-marked Nov. 20th, 1899," "Complainant's Exhibit Richard J. Ton postal-card."

5 Q. Do you know whether or not, Mr. Ton, the purported writer of this postal card has a machine procured from your house or manufactured by

1438 Wyckoff, Seamans & Benedict? A. He informed us over the telephone that he owns and uses a No. 5 Remington Standard machine.

6 Q. Please state, if you know, whether any typewriter company ever had an office or salesroom at the number given upon the postal card just identified by you, which is Room 460, 53 Dearborn street? A. I can't recollect the room number, but this was the street number of the Remington-Sholes Typewriter Company three or four years since. This was the general office, factory and salesroom of the Remington-Sholes Company.

CROSS-EXAMINATION by Mr. Fisher:

1439 1 x-Q. In your answer to direct-question 3, you stated that you knew that the typewriting machine and stand delivered from the W. D. Gibson Company belonged to Wyckoff, Seamans & Benedict because of a letter that the expressman brought from the W. D. Gibson Company at the time he delivered said goods to you; state how, to the best of your recollection, such letter was addressed? A. My recollection is that that letter was a note to the salesman who was trying to make the sale.

2 x-Q. Did not the name of Wyckoff, Seamans & Benedict appear on that letter or upon the envelope in which it was enclosed? A. I don't remember.

3 x-Q. Can you produce the letter or envelope?
1440 A. The envelope has been destroyed, but I can and will produce the letter.

4 x-Q. State, if you know, how this typewriting machine and stand happened to be placed with the W. D. Gibson Company? A. We received telephone call from W. D. Gibson Company some time prior to this—two or three days prior to November 17, 1899—stating that they were going to buy a second-hand machine, and wanted to know if we could sell them one; I told them no, but that we would be very glad to send them a new machine—a new Remington machine—on two or three days' approval, which they consented to have done.

5 x-Q. Did a salesman of Wyckoff, Seamans & 1441
Benedict visit the W. D. Gibson Company or any member of that company in regard to the matter of selling such machine to them? A. Yes, sir; our Mr. S. H. Farnham visited them.

6 x-Q. Was Mr. Farnham acquainted with any of the members of the Gibson Company at that time? A. He said he was.

(Signed) JOHN S. BAYES.

Counsel for complainant now states on the record that he has searched for and found the letter referred to in x-Qs. 1 and 3 of witness Bayes' deposition, and that the same is addressed, "Mess. Wyckoff, Seamans & Bene- 1442
dict."

JOHN LUPTON, of lawful age, a witness produced on behalf of the complainant, after being duly cautioned and sworn to testify the whole truth, did testify as follows:

DIRECT-EXAMINATION by Mr. McRoberts:

1 Q. Please state your name, age, residence and occupation? A. John Lupton; age, fifty-one years; Chicago, Illinois; shipping clerk for Wyckoff, Seamans & Benedict.

2 Q. Please look at the paper which I now show you, and which purports to be a freight bill of the 1443
Illinois Central Railroad Company, directed to "Rem. Type-writer Co. 127 Rees Str.," and state what, if anything, you know about it? A. There was a copy of this sent from the Illinois Central Railroad to Wyckoff, Seamans & Benedict to the cashier; he handed me 80 cents to pay for the freight with the bill. The first bill, I remember, was directed to "Remington Company." I sent an expressman with this bill and 80 cents for the goods. When they arrived at 144 Madison street, the office of Wyckoff, Seamans & Benedict, I noticed these packages were addressed for "Rem-Sho Type-writer Company,"

1444 together with the factory address of said company. When I noticed this address on the packages I went upstairs to the office and mentioned the fact to Mr. Bayes. He telephoned the Rem-Sho Type-writer Company that he had these packages for them subject to their order. A few days afterwards we received an order from the Rem-Sho Company with 80 cents that we had paid for freight, and their expressman took the goods away.

Counsel for complainant now offers in evidence freight bill just identified by the witness, and same is marked "Complainant's Exhibit Illinois Central Railroad Company Freight Bill."

1445 Cross-examination waived.

(Signed) JOHN LUPTON.

Adjourned until 2 o'clock P. M.

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Parties met pursuant to adjournment at 2 o'clock on the afternoon of the same day.

Present—The same as before.

ALFRED STALLWOOD, a witness produced on behalf of complainant, and of lawful age, being first duly
1446 cautioned and sworn to testify the whole truth, did testify as follows:

DIRECT-EXAMINATION by Mr. McRoberts:

1 Q. Please state your name, age, residence and occupation? A. Alfred Stallwood, 38 years, Chicago, Illinois; commission merchant, doing business at 138 S. Water street, Chicago.

2. Q. Have you a typewriting machine at your place of business, and, if so, please state its name or make? A. The Remington machine, supposed to be this year's make.

3 Q. Is this the only machine that you now have 1447
at your office? A. Yes.

4 Q. From whom did you obtain this machine? A. Wyckoff, Seamans & Benedict.

5 Q. How long have you had this Remington machine, which you obtained from Wyckoff, Seamans & Benedict? A. About two weeks.

6 Q. Prior to that time what make or type of machine did you have at your office? A. Remington-Sholes machine.

7 Q. How long did you have the Remington-Sholes machine at your office? A. Five months.

8 Q. Did you have it on a monthly rental? A. Yes, at $4 per month.

9 Q. At the time you obtained this Remington- 1448
Sholes machine, under what name was your business conducted? A. The firm of Bartelme & Stallwood. Mr. Bartelme died on the 18th of March, 1899, and I have conducted the business under the same name up to November 1, 1899, since which time I have conducted this business under the name of A. Stallwood & Company.

10 Q. Who ordered the Remington-Sholes machine which was obtained for the firm of Bartelme & Stallwood? A. I did.

11 Q. Please state where you ordered this Remington-Sholes machine? A. I couldn't give you the number; it was on State street. I think it was on the second floor of a building on the corner of State 1449
and Madison streets.

12 Q. Did it appear to be a salesroom for the sale of Remington-Sholes typewriters? A. It was. I saw a number of typewriting machines there.

13 Q. How did you get this address, or where did you get it? A. We had a telephone book at the store and I got it out of the telephone book.

14 Q. Was it a telephone directory, such as the one which I now show you? A. Yes.

15 Q. Please state, if you recollect, whether or not the references in the telephone directory from which you obtained this address were substantially

1450 the same as the three references which I now show you in the directory of the Chicago Telephone Company? A. I presume it was. It was the regular book that they had the first half of the year.

16 Q. Please state how these references or entries, which I have indicated, read? A. They occur as follows:

"No. North 572. Remington-Sholes Typewriter Factory, 127 Rees.

Main 3036. Remington-Sholes Co.; City Salesroom, 204, 126 State.

No. Main 137. Remington Standard Typewriter, Wyckoff, Seamans & Benedict, 144 Madison."

1451 17 Q. At the time you rented this Remington-Sholes machine, did you know of a typewriting machine that was designated or termed "Remington" or "Remington typewriter"? A. Not from actual experience, only from seeking the machine advertised so much and it got it into my head that the machine must be all right.

18 Q. You had heard of such a machine? A. Yes.

19 Q. At the time that you rented this Remington-Sholes machine, please state what machine you intended to obtain? A. I supposed I was to obtain a Remington machine.

20 Q. The Remington machine, then, as I understand you, was the machine which you intended to

1452 get? A. Yes.

21 Q. Was the machine which you intended to obtain of the same kind or make of machine as you now have in your office? A. No.

22 Q. I understood you to say that you intended to obtain a Remington machine? A. Yes.

23 Q. And I understand you to say that you now have a Remington machine? A. Yes.

24 Q. And I now ask you if the machine which you intended to obtain was of the same name or designation, that is, a Remington machine, as the one which you now have in your office? A. The name of the

machine was the Rem-Sho, that is the name that 1453
was on the paper table.

25 Q. When you obtained this Rem-Sho machine, you have stated that you intended to obtain the Remington machine; is that true? A. Yes.

26 Q. And the Remington machine which you now have, you obtained, did you not, from Wyckoff, Seamans & Benedict? A. Yes.

27 Q. When you looked up the address in the telephone directory and found the name "Remington-Sholes Company, Salesroom 126 State St.," were you under the impression, or did you think, that this Remington Sholes Company manufactured and sold the Remington machine? A. I did.

Question objected to as leading. 1454

CROSS EXAMINATION by Mr. Fisher:

1 x-Q. When you consulted the City Directory—I mean the telephone directory—you saw the name "Remington Standard Typewriter" appearing therein, did you not? A. I will state that I did not look any further after I saw the name "Remington."

2 x-Q. In your answer to direct question 16, you have stated the telephone numbers, the names and the addresses in the order in which they appear in the telephone directory, have you not? A. I said I presumed that was the way they appeared. 1455

3 x-Q. When you called at the salesroom of the Remington-Sholes Company, did you examine the machines that you saw there? A. I did not.

4 x-Q. Did you receive any circulars, catalogues or business cards at that time? A. I did not.

5 x-Q. After you rented the Rem-Sho machine you had occasion several times to call up the Remington Sholes Company by telephone, did you not? A. I will state that I did not.

6 x-Q. At the time the Remington Sholes Company rented you a Rem Sho machine, they furnished you with a bill or invoice for such machine, didthey not?

1456 A. I couldn't state whether they did or not, but I suppose the machine was delivered at the office and somebody receipted for the machine.

7 x-Q. The Remington Sholes Company furnished you with a bill each month for the rental of the machine, did they not? A. Yes; I believe one month was skipped and the next month they included the month that was omitted.

8 x-Q. I show you a bill upon the billheading of the Remington Sholes Company, and ask you to state whether the bills rendered to you by the Remington Sholes Company were upon printed billheads like this? A. Yes.

1457 The billhead identified by the witness is offered in evidence and marked "Defendant's Exhibit Remington-Sholes Bill-head."

9 x-Q. I call your attention to a rental receipt upon which appears printed an illustration of a type-writing machine with the word "Rem" upon one side thereof, and the word "Sho" upon the other side, and with the words "Remington-Sholes Company, 127 Rees St., Chicago" printed across the illustration, the illustration being in light brown ink. This receipt is signed by Bartelme & Stallwood, 138 S. Water street, and is dated June 13, 1899. I ask you to state whether the signature "Bartelme & Stallwood" is the genuine signature
1458 of said concern or not? A. I will state that that is the signature of my bookkeeper, who was authorized to make this signature.

10 x-Q. Do you remember seeing this rental receipt or any like it? A. No.

11 x-Q. Did you examine the machine which was rented by you from the Remington-Sholes Company, at or about the time that you rented it? A. No.

12 x-Q. You looked at the machine, did you not? A. No.

13 x-Q. When did you first examine it? A. After seeing it in my office.

14 x-Q. Did you ever notice the cover of the ma- 1459
chine, and how it was marked? A. There was no cover came with it.

15 x-Q. The machine had the name "Remington-Sholes Company, Chicago," on the bar in front of the key-board, did it not? A. I couldn't say.

16 x-Q. You did not operate the machine yourself, did you? A. No.

17 x-Q. How did you know the so-called "Remington" machine was made by Wyckoff, Seamans & Benedict? A. My stenographer told me that the machine that I had then was not the "regular" Remington, I think that was the word that she used.

18 x-Q. Did she not tell you that it was not the 1460
Remington Standard machine? A. She may have told me that; I wouldn't state positively that she used the word "Standard."

19 x-Q. When did this conversation with your stenographer occur? A. I should judge it was within a week or two after receiving the machine.

20 x-Q. And she told you at that time who made the regular Remington machine? A. I believe so.

(Signed) ALFRED STALLWOOD.

Counsel for complainant now offers in evidence a letter and envelope containing the same, purporting to have been written and directed by H. A. Mumaw, of Elkhart, Ind., and the same 1461
are marked "Complainant's Exhibit Mumaw Letter and Envelope," and it is stipulated between counsel, and so stated upon the record, that the said letter and envelope were written and directed by H. A. Mumaw, of Elkhart, Ind., upon the day of this date, and were deposited in the mail and intended for the Chicago office of Wyckoff, Seamans & Benedict; that they were delivered by the postal authorities of Chicago to the office of the Remington-Sholes Company at 127 Rees street, Chicago, Illinois, and that the said envelope was opened by some

1462 person in the employ of said Remington-Sholes Company; that the words written in pencil across the face of said envelope, "Opened by mistake, Remington-Sholes Co. A. L. Feerlein, Aud.," were written thereon by A. L. Feerlein, the general auditor of said Remington-Sholes Company; that the said letter and envelope were returned to the postal authorities by said Remington-Sholes Company, and delivered at the Chicago office of Wyckoff, Seamans & Benedict.

Counsel for defendant admits, and so states upon the record, that the postal card offered in evidence by complainant's counsel and marked
1463 "Complainant's Exhibit Richard J. Ton postal-card" was received from the mail-carrier by the Remington-Sholes Company at its office and salesroom, No. 126 State street, Chicago, Ill., on November 20, 1899, and was remailed to the Chicago office of Wyckoff, Seamans & Benedict by said Remington-Sholes Company in the envelope offered in evidence by complainant's counsel and marked "Complainant's Exhibit Remington-Sholes Envelope post-marked Nov. 20, 1899."

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UNITED STATES OF AMERICA, } ss.:
1464 Northern District of Illinois, }

I, WIRT E. HUMPHREY, United States Commissioner, and a Notary Public in and for the County of Cook and State of Illinois, do hereby certify that the foregoing depositions of William A. Smith, John S. Bayes, John Lupton and Alfred Stallwood, and each of them, were taken by and before me, pursuant to the stipulation annexed and with the consent of the parties, at the times and places therein specified; that the parties to said cause were present at the taking of the same, the complainant by its counsel, Josiah McRoberts, and the defendant

by its counsel, George P. Fisher, as therein appears; 1465
that said testimony is taken on behalf of the complainant to be used upon the hearing of a certain cause now pending in the Circuit Court of the United States for the District of Vermont, wherein Wyckoff, Seamans & Benedict is complainant, and Howe Scale Co. of '86 is defendant; that before deposing, the said William A. Smith, John S. Bayes, John Lupton and Alfred Stallwood and each of them were by me cautioned and duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that these depositions were severally taken down under my direction by a skilled typewriter from their statements, respectively, as therein appears before me. 1466

And I further certify that I am neither attorney nor of counsel for any of said parties in said depositions or caption named, and am in nowise interested in the result of said cause.

In testimony whereof, I have hereunto set my hand and notarial seal this 27th day of November, A. D. 1899.

WIRT E. HUMPHREY,
[NOTARY SEAL.] Notary Public, and United States Commissioner for the Northern District of Illinois.

Notary fees $15.
Pd. by Complainant.

1467

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CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION. } ss.:

THE UNITED STATES OF AMERICA TO THE MARSHAL OF THE NORTHERN DISTRICT OF ILLINOIS, GREETING:

We command you to summon Alfred Stallwood, if found in your district, to be and appear before

1468 Wirt E. Humphrey, United States Commissioner, at his office, Room 701, number 115 Dearborn street, Chicago, Illinois, in the District aforesaid, on the 24th day of November, A. D. 1899, at 2 P. M., to testify in behalf of the complainant in the cause wherein Wyckoff, Seamans & Benedict are plaintiffs, and Howe Scale Company of 1886 is defendant, now pending in the U. S. Circuit Court for the District of Vermont. And this you shall in no wise omit, under the penalty of the law in that case made and provided. And have you then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Jus-
1469 tice of the United States of America, at Chicago aforesaid, this twenty-second day of November, in the year of our Lord, one thousand eight hundred and ninety-nine.

S. W. BURNHAM,
Clerk.

[SEAL.]

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**Subpœna Duces Tecum.—U. S. Courts. Nor. Dis., Ills.**

UNITED STATES OF AMERICA, Northern District of Illinois, } ss.:

THE UNITED STATES OF AMERICA, TO W. A. SMITH,
1470 GREETING:

We command you, that all business and excuses being laid aside, you and each of you attend before Wirt E. Humphrey, United States Commissioner, on the 24th day of November, A. D. 1899, at 10 o'clock in the forenoon, at Room 701, No. 115 Dearborn street, in Chicago, in said District, to testify and give evidence in a certain cause now pending and undetermined in the United States Circuit Court for the District of Vermont, wherein Wyckoff, Seamans & Benedict is plaintiff and Howe Scale Company of 1886 is defendant, on the part of the said

plaintiff. And that you also diligently and carefully 1471
search for, examine and inquire after and bring with you, and produce at the time and place aforesaid, a certain City Delivery Book, No. 35, of the Wm. D. Gibson Company in your charge and control and usually kept by you upon your desk or upon a table in the rear thereof at the office of said company of North Clinton street, Chicago, Illinois, together with all copies, drafts and vouchers relating to the said documents, and all other documents, letters and paper writings whatsoever, that can or may afford any information or evidence in said cause; and for a failure to attend and do as above directed, you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the 1472
party aggrieved.

To the Marshal of the Northern District of Illinois to execute and return in due form of law.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago, in said District, this 22d day of November, A. D. 1899, and of our Independence the year.

S. W. BURNHAM,
Clerk.

I have served this writ within my District by reading the same to and in the presence and hearing of the within named W. A. Smith, at the same time 1473
tendering him the sum of one dollar and seventy cents ($1.70) on the 22d day of November, A. D. 1899.

JOHN C. AMES,
U. S. Marshal.
WM. E. CASS,
Deputy.

1 service 50
2 miles . 12

62

1474 NEW YORK, December 14, 1899, 11 A. M.

Met pursuant to notice.

Present—Counsel as before.

HOWARD B. WILSON, recalled as a witness on behalf of the complainant, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. Have you already testified as a witness in this case? A. Yes, sir.

2 Q. I show you what purports to be a letter ad-
1475 dressed to Wyckoff, Seamans & Benedict by Henry Mett, and also an envelope, and ask you to tell the Court what you know concerning said letter and envelope? A. The letter and the envelope in question came to hand in the office of Wyckoff, Seamans & Benedict, and was opened by me, and the letter passed along to the manager of our export department for attention.

3 Q. Is it any part of your duty to open the mail received by Wyckoff, Seamans & Benedict at their place of business in this city, and if so, state what your duties are in that respect? A. The opening of the mail is all under my supervision. I have an assistant to help me on the morning mail, which is
1476 very heavy. We sort the letters into two piles, he taking the city letters and I the out of town ones. The mail received during the day, whether it be city or out of town, is all opened by me.

4 Q. Was said letter received by Wyckoff, Seamans & Benedict at their place of business in this city in due course of mail? A. Yes, sir; it was.

5 Q. Are the letter and envelope now in the same condition in which they were at the time they were received by Wyckoff, Seamans & Benedict except that the envelope has been opened? A. Practically so, except that our marks have been placed on the letter.

6 Q. Please say what marks you refer to as having been placed on the letter since its receipt? A. As soon as a letter is received we pencil on it the date we received it in the office, and on the opposite side of the mark which we draw after the date we mark the date it was answered. The figures 13 on the letter are the marks referred to. 1477

The letter and envelope produced by the witness and referred to in his testimony are offered in evidence and marked "Complainant's Exhibit Mett Letter and Envelope."

Defendant's counsel objects to the introduction in evidence of said letter and envelope and to all testimony in relation thereto as immaterial, irrelevant and incompetent. 1478

Cross-examination waived.

(Signed) HOWARD B. WILSON.

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JOHN F. SOBY, called as a witness on behalf of the complainant, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. Please state your name, age, residence and occupation? A. John F. Soby; age, thirty-six; residence, 4208 Gerard avenue, Philadelphia; occupation, manager for Wyckoff, Seamans & Benedict, in Philadelphia. 1479

2 Q. What are your duties as manager for Wyckoff, Seamans & Benedict, in Philadelphia? A. To see that they get a sufficient amount of business out of that territory, and to do everything that in my judgment would conduce to that result.

3 Q. Then as I understand, you have general charge of their office and business in the City of Philadelphia? A. Yes, sir.

4 Q. When did you first become connected with the typewriter business and where? A. In the spring of 1881, in Philadelphia.

1480 5 Q. With what concern did you first become connected in the typewriter business and for how long a period did you continue with that concern? A. E. Remington & Sons was the name of the concern who controlled the business at that time, and I was employed by them for possibly a year or a little longer.

6 Q. With what concern did you next engage in the typewriter business and where? A. Wyckoff, Seamans & Benedict followed E. Remington & Sons, in charge of the selling of machines and I was then employed by them in Philadelphia.

7 Q. Have you ever since that period been in the employ of Wyckoff, Seamans & Benedict in the
1481 City of Philadelphia? A. Yes, with the exception of one year.

8 Q. And, during all this period your business has been connected with the sale of typewriting machines manufactured by E. Remington & Sons and by Wyckoff, Seamans & Benedict? A. Yes, sir.

9 Q. To what extent have machines manufactured by E. Remington & Sons and Wyckoff, Seamans & Benedict been sold in the City of Philadelphia and vicinity, to your knowledge, during the period intervening between 1881 and the present year? A. Very largely. I should say over 75 per cent. of the concerns in Philadelphia use Remington machines.

10 Q. How have the machines sold by E. Reming-
1482 ton & Sons and by Wyckoff, Seamans & Benedict, during the time you have been in their employ, been generally known and designated in the Philadelphia market and among users of such machines? A. The Remington applies in all cases irrespective of the models that we have put out from time to time.

11 Q. How have the various models been designated or the difference between the different models indicated? A. The Remington No. 1, the Remington No. 2, the Remington No. 3, the Remington No. 4, the Remington No. 5, the Remington No. 6, the Remington No. 7 and the Remington No. 8

12 Q. What reputation, if any, has the Reming-

ton machine manufactured by E. Remington & 1483
Sons and by Wyckoff, Seamans & Benedict and sold in the Philadelphia market borne as to quality and efficiency? A. Our machine has stood in Philadelphia among the users of typewriters as the very best machine of its kind that there has been. This, I think, is clearly indicated by the preponderance sold and used.

13 Q. When you first began the sale of typewriting machines in 1881, were there any other typewriting machines on the market in Philadelphia beside the Remington typewriter so-called? A. Yes, the Caligraph.

14 Q. Were there any other machines besides the Remington and Caligraph, so called, then on the 1484
market in the City of Philadelphia? A. No.

15 Q. Do you know whether there has been of late a typewriting machine advertised and offered for sale in the Philadelphia market called the Remington-Sholes or Rem-Sho typewriter? A. There is such a company and such a machine represented in Philadelphia.

16 Q. About how long has that machine been offered for sale or placed or sold in the Philadelphia market? A. About three years, I should say.

17 Q. Does the Remington-Sholes Company, so called, now have or maintain an office in the City of Philadelphia for the sale of its typewriting machines? A. Yes, to my best knowledge.

1485

18 Q. During the time that you have been manager of Wyckoff, Seamans & Benedict in Philadelphia, do you know or have you observed whether letters or packages or communications of any sort have been addressed to Wyckoff, Seamans & Benedict by any other name or names than "Wyckoff, Seamans & Benedict," and if so by what name or names has their business in Philadelphia been designated? A. There have and such packages as I have seen were addressed in the name of Remington & Co. In addition there have been packages re-

1486 ceived by us addressed The Remington-Sholes Company.

Defendant's counsel objects to the foregoing question and answer as incompetent, the packages themselves affording the best evidence.

19 Q. When were such packages received, for whom were they intended and what, if anything, was done with them?

Same objection.

A. A couple of months ago, I think in early October, a letter (in my previous reply I designated this as a package) was brought to our store by
1487 a representative of the Remington-Sholes Company who stated that it had been received at their office and opened by mistake. This letter was addressed to Remington & Co., Eleventh and Chestnut streets, Philadelphia. It was delivered by the postman to the office of the Remington-Sholes Company. A day or two following this there was a small package delivered to the office of Wyckoff, Seamans & Benedict, addressed to the Remington-Sholes Company, and the imprint on the label indicated that it had been sent from their London office. This package was sent by me to the Remington-Sholes Company in Philadelphia.

20 Q. I hand you what purports to be a letter or
1488 communication from the Metropolitan Life Insurance Company of Philadelphia and ask you to examine the same and to say whether or not this is one of the communications or a communication referred to in your previous testimony, and ask you to explain what you know about it? A. This is the letter that I referred to as having been addressed to Remington & Co., Eleventh and Chestnut streets. I can identify it by my figures representing the date received and the date replied to. These figures are in both cases the sixteenth, indicating that the letter went through our hands on that date.

The letter referred to by the witness in his testimony and identified by him is offered in evidence and marked "Complainant's Exhibit Metropolitan Life Insurance Company Letter." 1489

21 Q. You have referred to a package delivered at the office of Wyckoff, Seamans & Benedict, and addressed to Remington-Sholes Company in Philadelphia, and you have stated in substance that such package was sent by you to the office of said company. Please say whether or not you know what became of such package after it was delivered to said company, or where it now is? A. I know nothing about the package after I directed our boy to deliver it.

22 Q. Is it in your possession or under your control or have you now any means of knowing where it is or what became of it? A. It is not and I do not know what became of it. 1490

23 Q. Do you know whether there is an exhibition of any sort or kind being held in the City of Philadelphia at which typewriters are exhibited or advertised, or has there been any such exhibition to your knowledge? A. I know of none now. There was one which closed on December 2d last which was held under the auspices of the Commercial Museums and Franklin Institute, and it was known as the National Export Exposition.

24 Q. Were you at any time present during the period that said exhibition was being held, and if so, did you at any time observe that the so-called Remington-Sholes or Rem-Sho typewriting machine was there being exhibited? A. I was there on a number of occasions and observed that the company to whom you refer had an exhibit there. In fact, it was within a comparatively few feet of our booth. 1491

25 Q. What do you mean in your last answer by "our booth" A. The place where the Remington typewriter was on exhibition.

26 Q. Did you notice any signs or advertisements

1492 of the so-called Rem-Sho machine on the occasion of any of your visits to said exhibition, and if so, please describe them? A. I recall that they had signs exposed which would indicate what their exhibit was, but the exact wording of these signs is not positive in my mind.

27 Q. Did you at any time inspect those signs or cause them to be inspected for the purpose of obtaining the phraseology or language used on said signs? A. Not the signs that we understand to ordinarily advertise their business; there was a sign, however, that attracted my attention which was placed on a Remington typewriter that was being exhibited in the front of their booth, and this sign was examined
1493 by me carefully.

28 Q. Can you now state what the wording or language on the sign on the Remington typewriter which you saw exhibited on the Remington-Sholes booth was? A. I cannot. One day after examining it I made a transcription of the wording and sent that to my New York office, the office of Wyckoff, Seamans & Benedict.

29 Q. For the purpose of refreshing your recollection as to the contents of the advertisement or statement which you saw exhibited on the Remington machine in the Remington-Sholes booth at the exhibition in Philadelphia, I show you a paper-writing and ask you to examine the same for the purpose of
1494 refreshing your recollection, and if it does refresh your recollection I ask you to state the contents of said advertisement or statement that was exhibited on said Remington machine? A. I have read carefully this memorandum and am very positive that the wording is exact to that of the sign which I saw on the Remington typewriter at the Remington-Sholes booth. The wording is, "TWO GENERATIONS "OF TYPEWRITERS. This machine was invented by "C. Latham Sholes of Milwaukee in the early "sixties. Later manufactured by E. Remington & "Sons, Ilion, N. Y. It is the original article itself. "The 'Rem-Sho' Typewriter was brought out by

"Zalmon G. Sholes, the son of the inventor, and 1495
"Franklin Remington the son of the manufacturer
"of this machine. An instance of the familiar
"adage that 'History Repeats Itself.'"

30 Q. What kind of a Remington machine, that is, what number was it that was on exhibition in connection with this sign or statement at the booth of the Remington-Sholes Company, in the exhibition at Philadelphia? A. It was of the model that we call No. 1.

31 Q. Did you observe the same sign or statement on each occasion when you visited the exhibition? A. I cannot say when it was placed there, but I observed it some days after the exhibition opened, and it remained there until the last time I made a visit, 1496
which was a couple of weeks before the exhibition closed.

32 Q. Was said exhibition largely attended by the public? A. Very; in point of fact, it was more largely attended than any of the expositions that have been held in this country with the exception of the Centennial at Philadelphia or the World's Fair at Chicago. I believe this is a matter of record.

33 Q. What was the purpose in exhibiting or displaying typewriters at said exposition, so far as you know? A. To interest the public in our wares.

CROSS-EXAMINATION by Mr. Fisher:

34 x-Q. Is the Philadelphia agency of Wyckoff, 1497
Seamans & Benedict one of their largest agencies in this country? A. Yes, sir; I would assume that it stood third in the business done, probably New York being first and Chicago second.

35 x-Q. It is a fact, is it not, that the Philadelphia office of Wyckoff, Seamans & Benedict is on the corner of Ninth and Chestnut streets and that the Philadelphia office of the Remington-Sholes Company is on the corner of Tenth and Chestnut streets? A. No, sir; only partially so. The office of Wyckoff, Seamans & Benedict is three doors below the

1498 corner of Chestnut, whilst the office of the Rem-Sho is, I presume, four doors above the corner of Chestnut street.

36 x-Q. But the buildings in which these respective offices are located are at the corners of the streets as indicated in my preceding questions, are they not? A. The buildings are.

37 x-Q. State, if you know, who represents the Remington-Sholes Company in Philadelphia? A. This I cannot do. I don't know that I ever met the gentleman.

38 x-Q. Do you not know, or is it not you understanding that a Mr. Sholes represents the Remington-Sholes Company in Philadelphia, or looks after the
1499 sale of their machines at such point? A. I have met Mr. Sholes, but understood that he was merely a salesman for the Remington Sholes Company at Philadelphia.

39 x-Q. In you answer to direct question 18 you say that there have been packages which you have seen addressed to Remington & Co. and other packages addressed The Remington Sholes Company, such packages having been received by you at the office of Wyckoff, Seamans & Benedict in Philadelphia. In the course of your testimony, however, you have exhibited but one letter addressed Remington & Co. and have referred to but one package addressed to the Remington-Sholes Company. Are these the only
1500 two instances of which you are aware in which letters or packages have come so addressed to the office of Wyckoff, Seamans & Benedict? A. Yes.

40 x-Q. The booth occupied by the exhibit of the Remington-Sholes Company at the recent Philadelphia Exposition contained the usual signs, circulars, catalogues and business cards of said company, did it not? A. Yes, sir.

41 x-Q. You have referred to the machine which you observed in the booth of the Remington-Sholes Company, and in connection with which there was a statement beginning "Two Generations of Type-

writers," as being of the model that you call No. 1. 1501
Do I understand that you intend to tell the Court that this old machine was the same as the machine put upon the market by E. Remington & Sons, and that it was a marketable machine? A. It was the style of machine that was marketed by E. Remington & Sons. It is marketable.

42 x-Q. Do you mean to say that you ever saw on sale a machine in all respects like this old exhibit that was in the booth of the Remington Sholes Company? A. Yes, a counterpart of this one was offered me within a few weeks and was offered to several others in Philadelphia.

43 x-Q. Did the old machine have a finished case or was the frame finished or ornamented like the 1502
machine which was at one time sold by E. Remington & Sons as the No. 1 machine? A. The case was not complete. The machine was decorated to some extent on the sides, but I could not now give the design.

44 x-Q. The machine that was offered to you recently, and which you say was similar to the machine exhibited in the booth of the Remington-Sholes Company was offered rather as a curiosity than as a marketable machine, was it not? A. I don't know. I did not personally see the machine; it was offered by a gentleman who had been accustomed to coming in the office at infrequent periods, and he stated that he had an old No. 1 Remington machine which he 1503
didn't have any use for now, that it was in good condition considering its style and age, and he would sell it for a very small sum.

45 x-Q. Do you remember what marks, if any, were on the old machine exhibited in the booth of the Remington-Sholes Company? A. I do not.

REDIRECT-EXAMINATION:

46 RD-Q. About how long, according to your best knowledge and recollection, have the Remington-Sholes Company, so called, been selling its own ma-

1504 chines in Philadelphia? A. I don't know; as near as I can recall, ten or twelve months.

(Signed) JOHN F. SOBY.

RECESS.

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LEO NABOKOFF a witness called on behalf of the complainant, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. Please state your name, age, residence and occupation? A. Leo Nabokoff, proprietor of the
1505 Russian Bureau of Information, 17 State street, New York; age, sixty-three.

2 Q. For how long a period have you been proprietor of the Russian Bureau of Information? A. Two years.

3 Q. Were you born and reared in Russia and up to what period of time did you reside there? A. I was born in Russia, Province of Caherson, and I left Russia when I was thirty-two years old.

4 Q. Are you familiar with the Russian language and has it been a part of your business to make translations from Russian publications, newspapers, &c., into English? A. I am perfectly familiar with the Russian language, being a native of Russia, and am correspondent of a leading Russian newspaper,
1506 *Novoe Vremya*, also I am a professional translator from and into Russian and English languages.

5 Q. How long have you been correspondent for the Russian newspaper known as *Novoe Vremya*? A. Over four years for this paper, but I was correspondent for several other papers in Russia for many years.

6 Q. I show you what purports to be a newspaper printed in the Russian language and ask you to state the name of the newspaper and where and when the same purports to have been published?

Objected to as immaterial and irrelevant.

A. The name of the newspaper presented to me is 1507
*Novoe Vremya*, published in St. Petersburg, Russia, on the 4th–16th of October, 1899.

7 Q. State whether or not you are now a correspondent for said newspaper and whether or not this is the *Novoe Vremya* newspaper referred to by you in a previous answer?

Same objection.

A. This is the same paper and I am correspondent for it now. My latest correspondence to that paper was describing the Philadelphia exhibition and launching of the cruiser *Variag* from Cramp's shipyard.

8 Q. State, if you know, the standing and extent 1508
of circulation in Russia of the paper before you known as the *Novoe Vremya*?

Same objection.

A. This is the leading paper of Russia and its circulation about eighty thousand copies.

9 Q. About how long, to your knowledge, has said newspaper been in existence? A. I remember this about forty years myself.

10 Q. I call your attention to an advertisement of a typewriting machine on the first page of the newspaper known as the *Novoe Vremya* of date October 4th–16th, 1899, No. 8478, and ask you to say whether or not you have examined and read said advertise- 1509
ment.

Same objection.

A. I have, yes.

11 Q. I show you what purports to be a translation of said advertisement, and ask you to examine said translation, and to say whether or not in your opinion it is a correct translation of said advertisement?

Same objection.

A. It is perfectly correct.

1510 The newspaper known as the *Novoe Vremya* shown to the witness, and particularly the advertisement and the translation thereof, which is stated by the witness to be a correct translation of said advertisement are offered in evidence and marked "Complainant's Exhibit Novoe Vremya Advertisement."

Defendant's counsel objects to the introduction in evidence of the newspaper, the advertisement and translation as being immaterial and irrelevant, and for the reason that it has not and cannot be proven that the defendant in this cause or the Remington-Sholes Company or its predecessor ever caused said advertisement to be
1511 published or was aware of said publication, or that said advertisement was ever published by any one having authority from the defendant in this cause, or from the Remington Sholes Company or its predecessors to act for them, or either of them, in such respect, and counsel gives notice that at or before the hearing of the cause he will move the Court to strike from the record said newspaper and translation and all questions and answers relative thereto.

12 Q. I show you another newspaper purporting to be printed in the Russian language and ask you to say, if you know, what the name of said paper is and when and where it purports to have been pub-
1512 lished?

Objected to as immaterial and irrelevant.

A. The name of the paper is St. Petersburg *Gazette*, published in St. Petersburg on the 26th September (old style), 1899, No. 264.

13 Q. Do you know whether such newspaper known as the St. Petersburg *Gazette* is published in St. Petersburg and if so, for how long a period of time has it been published in said city?

Same objection.

A. It is published in St. Petersburg and to my best belief for about twenty-five years.

14 Q. State, if you know, the extent of circula- 1513
tion of said paper, that is to say, whether its circulation in St. Petersburg is large or small or what you know on that subject? A. It is a second rate newspaper; its circulation is not large and I don't believe it exceeds twenty thousand.

15 Q. State, if you know, how frequently said newspaper known as the St. Petersburg *Gazette* is published, whether it is daily or weekly or how frequently? A. Both of those papers are daily papers, including Sundays.

16 Q. Are they circulated outside of St. Petersburg?

Same objection.

A. *Novoe Vremya*, yes; very largely throughout 1514
Russia; *St. Petersburg Gazette* is not.

17 Q. I call your attention to an advertisement of a typewriting machine which appears in the *St. Petersburg Gazette* of September 26, 1899, No. 264, and ask you to say whether or not you have read said advertisement, which appears on page 11 of said paper, and whether you understand its contents?

Same objection.

A. I have read the advertisement shown to me and understand its contents.

18 Q. I show you what purports to be a translation of said advertisement into English and ask you 1515
if you have compared the English translation with the advertisement in the Russian language, and if you have done so, please say whether or not said translation is a correct translation of the advertisement into English?

Same objection.

A. Yes; I have read the translation shown to me and compared it with the original Russian and found the translation quite correct.

The newspaper known as the *St. Petersburg Gazette* shown to the witness, being No. 264, and the advertisement in said newspaper on

1516 page 11, and the English translation thereof are now offered in evidence and marked "Complainant's Exhibit St. Petersburg Gazette and Advertisement."

Defendant's counsel enters the same objection to the introduction of the paper and translation last mentioned and gives notice that a motion to strike them from the record, as were made and given with respect to the newspaper, *Novoe Vremya*, said objection and notice following the answer to Q. 11 of this deposition.

19 Q. I now show you what purports to be a booklet or catalogue of the Remington-Sholes typewriting machine, or Rem-Sho typewriting machine, and
1517 ask you to state whether or not you have examined said booklet or catalogue, and particularly the cover, the first, or title page, and the following pages down to the star in blue pencil?

Objected to as immaterial, irrelevant and incompetent.

A. I have.

20 Q. Have you made any translation of those parts of said booklet to which I have referred in my previous question, and, if so, have you said translation now here in court with you?

Same objection.

A. I have made a translation and I identify it as
1518 the same I have made of the original presented to me now in court.

21 Q. Is the translation which you have made a correct translation of the Russian language into English which appears in said booklet on the cover, the first, or title page, and the pages following down to and including the page bearing the star in blue pencil?

Same objection.

A. It is correct.

The catalogue referred to and from which translation has been made by the witness, and particularly the pages referred to and translated

by him, and the translation thereof are now 1519
offered in evidence and marked "Complainant's Exhibit Remington Imperial Booklet and Translation."

Defendant's counsel objects to the introduction of the pamphlet and translation last mentioned, for the reason that the same are immaterial, irrelevant and incompetent, and for the reason that it has not and cannot be proven that said pamphlet or catalogue was published or circulated or caused to be published or circulated by the defendant in this cause, or by the Remington-Sholes Company or its predecessor, or by any one having authority from them, or either of them, to act in such respect, or that 1520
said pamphlet or catalogue was published with the knowledge or consent of this defendant or of the Remington-Sholes Company, or of any one having authority to act for them in such matters, and defendant's counsel gives notice that at or before the hearing of the cause he will move the Court to strike from the record said pamphlet and translation and all questions and answers in regard thereto.

Cross-examination waived.

(Signed) LEO NABOKOFF.

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ROBERT MCKEAN JONES, recalled on behalf of the 1521
complainant, testifies as follows:

DIRECT-EXAMINATION by Mr. Donnelly:

1 Q. Have you already been called and sworn as a witness in this case? A. I have.

2 Q. I show you what purports to be a catalogue issued in the Russian language advertising the Remington Imperial Typewriting Machine, and ask you to tell the Court what you know about said catalogue, that is, from whom was it received, if you know?

Objected to as irrelevant, immaterial and incompetent.

1522 A. It appears to be a copy of a catalogue received by Wyckoff, Seamans & Benedict from their representatives, the J. Block Company, in Russia.

3 Q. Is the J. Block Company a dealer of Wyckoff, Seamans & Benedict, that is, for the sale of the Remington machines, so-called, in Russia?

Same objection.

A. The J. Block Company are exclusive dealers for the Remington typewriter for the Russian Empire.

4 Q. Was the catalogue or booklet of the Remington Imperial Typewriter, which I show you, received by mail from the J. Block Company?

1523 Same objection.

A. It was so received.

5 Q. I show you two newspapers, one of which is the *St. Petersburg Gazette* of date September 26, 1899, No. 264, and the other the *Novoe Vremya* of October 4th-16th, 1899, No. 8478, and ask you to say, if you know, from whom and by whom those papers were received?

Same objection.

A. Both copies referred to in the question, as well as the translations of advertisements therein were received by Wyckoff, Seamans & Benedict from the J. Block Company, their exclusive dealers for the
1524 Russian Empire.

6 Q. I show you what purports to be a letter written by the auditor of the Remington-Sholes Company to Mr. A. M. Martin, Pittsburg, Penn., dated Chicago, October 24, 1899, and ask you to state what you know about said letter? A. Said letter is one received by Wyckoff, Seamans & Benedict from their Pittsburg branch with the information that same had been handed to them by Mr. A. M. Martin, their former dealer in the City of Pittsburg.

It is admitted by defendant's counsel, subject to correction if the facts appear otherwise, that

the letter referred to in the last question is written upon the usual letterhead of the Remington-Sholes Company and that the signature of A. L. Fierlein is genuine. 1525

The letter shown to and identified by the witness is offered in evidence and marked "Complainant's Exhibit Remington-Sholes Fierline Letter."

7 Q. State, if you know, to what extent and in what parts of Russia the typewriting machines of Wyckoff, Seamans & Benedict known as the Remington are sold and used?

Objected to as immaterial and irrelevant.

A. They are sold and used in all parts of European Russia and in most of the important points of Asiatic Russia where there is any commerce or important Government offices. 1526

8 Q. Do you remember the circumstance of a Mr. Schneider calling at the office of Wyckoff, Seamans & Benedict, and of your having an interview with him concerning advertising, and if so, state whether said advertisement referred to any communication which he had received, and if so, what?

Objected to as immaterial and irrelevant.

A. On or about the 26th of October last Dr. H. E. Schneider, representing himself as the publisher of a series of German newspapers published in New York, called upon me and stated that he had received from us a proposition relative to advertising in his publications for which we proposed to pay by delivery of typewriting machines. 1527

9 Q. Had Wyckoff, Seamans & Benedict made any such proposition to Mr. Schneider, and if not, did you learn from him or otherwise what concern had made such proposition?

Same objection.

A. No such proposition had been made by Wyckoff, Seamans & Benedict, and it became evident, by further conversation with him, that the

1528 proposition must have come from other parties. He knew only that it had come from what he had supposed to be the manufacturers of the Remington typewriter.

10 Q. At the time of your interview with him, did Mr. Schneider indicate by words or otherwise from what source the proposition or communication had come?

Same objection.

A. He stated that it came from the Remington people or words to that effect. I cannot be quite sure of the exact phraseology.

11 Q. I show you what purports to be a draft payable to the order of Remington drawn by the Mt.
1529 Vernon Banking Company, Third National Bank of Cincinnati, also an envelope addressed Remington, 12 East Market street, Indianapolis, and ask you to tell the Court what you know about said draft and envelope? A. Said draft and envelope were received by Wyckoff, Seamans & Benedict in New York from their branch in Indianapolis.

The draft and envelope are marked for identification "Complainant's Exhibit Remington Draft and Envelope."

Cross-examination waived.

(Signed.) R. McKean Jones.

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1530 New York, December 16, 1899, 10.30 A. M.

Met pursuant to adjournment.

Present—Counsel as before.

Samuel Weingart, a witness called on behalf of the complainant, being duly sworn, testifies as follows:

Direct-examination by Mr. Donnelly:

1 Q. Please state your name, age, residence and occupation? A. Samuel Weingart; 22 East Ninety-first street, New York City; Principal of school; age, fifty-one.

2 Q. Have you at any time purchased a type- 1531
writing machine of Page, Dennis & Co., of the City of New York, and if so, please state when you purchased said machine? A. I bought a typewriting machine from Page, Dennis & Company in the last week of June, 1898.

3 Q. Please state how or under what circumstances you came to purchase a typewriting machine of Page, Dennis & Co., of this city? A. I had intended buying a Remington typewriter since a long time. It happened that I bought a scale at the Howe Scale Company, and my attention was called to a sign in that store, "Remington Typewriter Company." I asked how much a Remington typewriter was; they told me $100. I asked them 1532
whether they would give me a discount, as I was the Principal of a school. Whereupon the salesman answered that he would give me the regular discount in such cases of 35 per cent. I sent him a check for $65 on June 29th, and they sent me the machine.

4 Q. At the time you purchased this machine did you notice whether or not the name Remington was displayed in the store of the Howe Scale Company? A. Of course; that sign was it that attracted my attention.

5 Q. And at the time you purchased this machine and saw this name Remington displayed in the store of the Howe Scale Company did you make any in- 1533
quiry as to what machine or typewriting machine they kept for sale, and if so, what inquiry did you make and what answer, if any, did you receive? A. I asked them whether they sold the Remington typewriter and they said yes.

6 Q. At the time you purchased this machine of the Howe Scale Company or Page, Dennis & Company in this city did you or not believe that you were purchasing what is known and recognized as the Remington typewriter? A. I was positive that I had bought a Remington typewriter, and was informed of my mistake only a few weeks after, when a friend of mine wanted to write on my machine,

1534 who owned a Remington, and told me that my machine was different from his, whereupon I came to the conclusion that I had a different instrument, although I did not know at that time that I had bought from a different concern.

7 Q. At the time you purchased this machine of Page, Dennis & Co. you then believed that you were purchasing and obtaining the old and well-known Remington typewriter such as has been known for many years in the market; is such the fact? A. Yes.

8 Q. What became of this machine which you purchased of Page, Dennis & Co., as you have stated? A. I gave it to an expressman, who had an
1535 order for it made out by Wyckoff, Seamans & Benedict.

9 Q. About how long ago was it that you delivered it to an expressman from Wyckoff, Seamans & Benedict? A. About three weeks ago.

CROSS-EXAMINATION by Mr. Fisher:

10 x-Q. How many times did you go to the office of the Howe Scale Company before you purchased the typewriting machine? A. Twice.

11 x-Q. Did you receive at either of these visits any catalogue or printed matter relating to the typewriter that you purchased from the Howe Scale Company? A. I don't think I did. I went from
1536 there to the Smith Premier, a few doors away, and inquired what they charged for their typewriter. When I found that their price was the same, I came back the next day to the Remington people and asked them for a discount, and when they granted it to me I told them I would send them a check for $65, and upon the receipt of that check they should send me the typewriter to my summer place at High Mount, Ulster County, New York. That they did.

12 x-Q. Did you examine the typewriter in the office of the Howe Scale Company at that time; I mean during either of these visits? A. I never had

seen any of their typewriters before, I relied implicitly 1537
on the name of the manufacturers. There were no typewriting machines there whatever, and consequently I did not examine any, and even if I had examined any I wouldn't have known the difference, because I had never written on a typewriter before, nor had examined any closely.

13 x-Q. If I understand you correctly, you knew or had been informed that the Remington machine was a first-class machine, and that was practically all you knew about that machine. Did you know the names of the makers of the Remington machine? A. No.

14 x-Q. Did you know the peculiar marks or characteristics of the Remington machine? A. No. 1538

15 x-Q. You simply heard the Remington typewriter talked about and had seen it advertised? A. Yes; that is all.

16 x-Q. Now, you have stated in your answer to direct Q. 3 that your attention was called to a sign in the Howe Scale Company's store which read, "Remington Typewriter Company." Are you ready to say that that was all there was on that sign? A. No, but that was all I noticed.

17 x-Q. What was on the sign, as a matter of fact? A. I cannot tell you. There may have been the word Sholes on the sign, but this would not have made any difference in my mind, as I was not aware of another company of this kind. Even if I 1539
had seen Sholes on the sign it would not have made any difference, having seen the name Remington.

18 x-Q. Do you remember what name and what manufacturer's address were upon the machine that was supplied to you by the Howe Scale Company? A. If I am not mistaken, no name or no manufacturer's address were on the machine, as far as I can remember. I looked for it but couldn't find it.

19 x-Q. What kind of a cover was furnished with that machine? A. It came in a wooden box, whereupon I wrote to them to send me the regular cover to it, but I received no answer. They sent me later on a rubber cover.

1540 20 x-Q. Was there not upon the front bar of the machine that you received from the Howe Scale Company the name "Remington-Sholes Company, Chicago, Illinois?" A. I don't remember at all; I don't know; I cannot remember; I never looked. But even if there was, as long as the name Remington was on I was satisfied.

21 x-Q. Did you receive a bill or a receipted statement with that machine, and if so, can you produce it? A. I did. I have looked for it but cannot find it,

It is stipulated by counsel for complainant that if the bill is found at any time hereafter he will put it into this case.

1541 22 x-Q. Is it not a fact that when you inquired in regard to the price of typewriting machines at the office of the Howe Scale Company that you were informed that they sold the Remington Sholes machine? A. No, the word Sholes I do not remember as mentioned. I am positive about that because I never heard the word Sholes later on. This is the first time I heard the word Sholes.

23 x-Q. Had you not seen the word Sholes before to-day in connection with a typewriting machine? A. I do not remember ever having heard it or seen it before.

24 x-Q. Can you describe the person with whom you had the conversation at the office of the Howe
1542 Scale Company in regard to typewriting machines? A. No.

25 x-Q. Was he an old man or a young man? A. Young man; the man in the Howe Scale Company who sold me the scale was an old man, he introduced me to the young man. The next day when I came there were two young men in the store and one consulted the other with regard to the discount that should be given to me that I asked.

26 x-Q. Can you describe either of those young men who were present at the time you had the conversation regarding typewriters at the office of the Howe Scale Company. A. No, and I do not think I would recognize them if I would see them.

27 x-Q. Were they both present at the time that 1543
you inquired whether they sold the Remington typewriter? A. They were present the second time when I called.

28 x-Q. On which of your visits to the Howe Scale Company offices were you informed that they sold the Remington typewriter? A. As long as I was dealing with them, I was under the impression that they were selling the Remington typewriter, and I continued under that impression until about three weeks after the machine was in my possession, and then even I did not know that the machine I had bought was of a different concern, although I knew then that it was a different make from those that my friend who owned a Remington typewriter 1544
used. I was only told the truth when I came back to the city, in the fall of 1898.

29 x-Q. If I understand the drift of your testimony correctly, it would have made no impression upon you and would have made no difference if either of the young men in the Howe Scale Company office had told you that they were selling the Remington-Sholes typewriter, and I assume that you would have regarded that in the same way that you would have regarded a sign bearing the name "Remington-Sholes Typewriter." Is this correct? A. Yes, it would have made no difference to me. I might have thought that this was a certain kind of the Remington machines made by the Remington people. 1545

30 x-Q. And it would have made no difference if you had been told that the machine in question was manufactured by the Remington-Sholes Company at Chicago, Illinois, or that it was not manufactured by Wyckoff, Seamans & Benedict, is that correct? A. Yes, that is correct, because I did not know anything about the full name of the company nor of the place where the machines were manufactured.

31 x-Q. And it would have made no difference if you had been told at that time that it was a better machine than the Remington Standard typewriter manufactured by Wyckoff, Seamans & Benedict at

1546 Ilion, New York? A. It would have made a difference, because then I would have inquired first whether their statement was true before buying.

32 x-Q. Are you ready to state to the Court that the name Sholes, or the name Remington-Sholes, or the name Rem-Sho was not mentioned in either of the conversations that you had at the office of the Howe Scale Company, and concerning which you have testified? A. I am almost positive that that name was not mentioned. I am not sure.

33 x-Q. Are you as positive concerning this mention of the name as you are concerning the use of the name Remington-Sholes, or the name Rem-Sho, upon the sign which was exhibited in the office
1547 of the Howe Scale Company? A. If anybody had asked me a month after I had bought the machine whether I had ever heard the name Remington-Sholes before, I would have positively said no. Now since I have heard this name so often lately my mind is so deeply impressed with it that I cannot answer this question positively. The sign may have contained the name Sholes attached to the name Remington, but it made no impression upon me. The same is true as to the conversation, if any such conversation occurred.

34 x-Q. When did you part with the machine that you received from the Howe Scale Company? A. About three weeks ago.

1548 35 x-Q. How did you happen to dispose of that machine? A. I happened to meet a former pupil of mine, Arthur Baer, this spring, at the funeral of his father. I asked him in what business he was. He told me he was selling typewriters, and then I told him in what manner I was swindled by the Remington-Sholes Company. This conversation occurred May 8, 1899. Mr. Baer told me then that that company was in the habit of pretending to sell the real Remington typewriter, and he, in fact, was the first one who told me of the way of their doing business. Some months afterwards Mr. Donnelly called upon me and asked me about the facts and

a few weeks later Wyckoff, Seamans & Benedict 1549
sent for the typewriter, exchanging it for another.

36 x-Q. You say that on May 8, 1899, you told Mr. Baer that the Remington-Sholes Company had swindled you? A. I told him that I thought I had a Remington and found out that I had a Remington-Sholes.

37 x-Q. And if I understand you correctly, he said some things to you concerning the Remington-Sholes Company at that time? A. Yes, sir.

38 x-Q. About how long did the conversation occupy the first day of your visit to the Howe Scale Company office; I mean the conversation relative to typewriting machines? State all that was said, as 1550
near as you can remember? A. Not more than five or ten minates. I told them that I was anxious to buy a typewriter. I asked them whether they had the Remington typewriter. I asked what it cost. When they told me $100, I went away. That was all the first day.

39 x-Q. State the conversation that occurred the second day relative to typewriters? A. When I came back the second day I told them that I was the principal of a school; that I heard that typewriting concerns gave a discount to schools, especially if they teach bookkeeping, typewriting, and so on. They told me that the discount in such cases was 35 per cent., whereupon I told them that 1551
I would send them a check for that amount. That was all the conversation. I had not seen any machines.

40 x-Q. Did you have occasion to write the Howe Scale Company in regard to any repairs on the machine? A. Yes.

41 x-Q. Did you address your letter to the Howe Scale Company? A. No. I may have addressed it to Page, Dennis & Company.

42 x-Q. And you made your check payable to Page, Dennis & Company? A. Yes, sir. The check is dated June 29, 1898.

1552 REDIRECT-EXAMINATION:

48 RD-Q. You have stated that you are the principal of a school; please state how long you have been principal of your present school and whether you are the proprietor of it, and the character of the school which you are conducting? A. I have been principal of my school since 1874. It is a day and boarding school, and I am the proprietor of it.

44 RD-Q. About what is the size of the school as to number of pupils? A. The school has numbered for the last ten years between 110 and 140 pupils.

45 RD-Q. In your answer to x-Q. 38, wherein you were requested to state your conversation with the Howe Scale Company or Page, Dennis & Co., relative
1553 to typewriting machines, you said in your answer, "I asked them whether they had the Remington typewriter." What reply, if any, did they make to your inquiry if they had the Remington typewriter? A. I don't know. I suppose they said yes, or I would not have bought it.

46 RD-Q. Did you buy that machine of Page, Dennis & Company as and for a genuine Remington machine, such as you had seen advertised, and such as you believed had been upon the market for many years?

Question objected to as leading and improper, and calling for a conclusion.

1554 A. Yes.

Complainant's counsel stipulates that he will obtain the machine from Wickoff, Seamans & Benedict, which was purchased by Professor Weingart of Page, Dennis & Co., and will introduce the same in evidence in this case, and that if said machine should be omitted from the case it may be assumed to be the same as to its various marks as the exhibit of defendant's machine already in evidence.

(Signed) S. WEINGART.

CIRCUIT COURT OF THE UNITED STATES, 1555

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

vs.

HOWE SCALE COMPANY OF 1886.

In Equity.

STATE OF NEW YORK, County of New York, } ss.: 1556

I, L. M. BEEHAN, a notary public in and for the County of New York, duly commissioned and sworn, and Special Examiner pursuant to the stipulation of the respective parties to the above entitled suit, DO HEREBY CERTIFY that on the several days named in the foregoing depositions I was attended at the office of Messrs. Donnelly & Felbel, No. 280 Broadway, New YorkCity, by H. D. Donnelly, Esq., counsel for complainant, and George P. Fisher, Jr., Esq., counsel for defendant; that the witnesses named in the said depositions were duly cautioned and sworn to testify the whole truth and were carefully examined and their depositions were reduced to typewriting by 1557 me in their presence and read to them by me and by them signed in my presence and in the presence of said counsel; that I am a skillful typewriter, and by consent of counsel said depositions hereto annexed were typewritten by me at the time they were taken; that all the exhibits introduced in evidence are identified by my initials and notarial seal, together with their respective dates of introduction in evidence.

1558 I FURTHER CERTIFY that I am not of counsel nor attorney for either of the parties, nor connected by blood or marriage with any of the officers of the complainant or defendant corporation, nor in anywise interested in the event of this cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 5th day of November, 1900.

L. M. BEEHAN,
Notary Public and Special Examiner.

[SEAL AND STAMP.]

**Complainant's Rebuttal Testimony.** 1

# United States Circuit Court,

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

*vs.*

THE HOWE SCALE COMPANY OF 1886. 2

TESTIMONY TAKEN ON BEHALF OF COMPLAINANT before Clara A. Blackwell, a Notary Public in and for the County of Cook and State of Illinois, acting as Special Examiner, by consent of the parties, under and pursuant to the annexed stipulation, at her office, Room 44 No. 107 Dearborn street, Chicago, Illinois, on the 4th day of December, A. D. 1900, at 11 o'clock A. M.

Appearances—H. D. DONNELLY, Esq., and JOSIAH MCROBERTS, Esq., for complainant, and GEORGE P. FISHER, Esq., for defendant.

BRUCE L. HOLTON, of lawful age, a witness produced on behalf of complainant, after being duly cautioned and sworn to testify the whole truth, did testify as follows: Direct examination by Mr. Donnelly: 3

Q. 1. Please state your name, age, residence and occupation.

A. Bruce L. Holton, 30 years of age, St. Joseph Mo., resident salesman for Wyckoff, Seamans & Benedict.

Q. 2. As resident salesman at St. Joseph Mo., for Wyckoff, Seamans & Benedict please state your work and duties.

A. Selling typewriters and managing the office.

Q. 3. What typewriting machine do you sell as such resident agent and manager?

A. The Remington Typewriter.

Q. 4. How long have you been connected with the St. Joseph, Mo., office of Wyckoff, Seamans & Benedict in selling the Remington Typewriter?

A. Two years and three months.

Q. 5. Have you ever heard of the so-called Remington-Sholes typewriting machine, or the Rem-Sho typewriting machine, and if so, when did such machine first come to your knowledge or when was your attention first drawn to it?

A. Well, about three years ago, as I remember.

Q. 6 Have you ever heard of the so-called Remington-Sholes, or the Rem-Sho typewriting machine being offered for sale or advertised for sale at St. Joseph, Mo.

Counsel for defendant objects to the question and to any answer that may be made thereto as irrelevant, immaterial and incompetent, and as not properly in rebuttal, no foundation for any such line of testimony having been laid in the testimony on behalf of defendant; the question is further objected to as calling for mere hearsay evidence.

A. Yes.

Q. 7. When was your attention first drawn to such advertisement, or when did the fact of such advertisement first come to your knowledge with relation to the sale or offer for sale of the Remington-Sholes typewriter at St. Joseph, Mo.

Same objection.

A. About the first part of May, 1899.

Q. 8. What drew your attention to the advertise- 7
ment or offering for sale of the Remington-Sholes typewriting machine in May, 1899?

Same objection.

A. I can't tell you exactly, but the fact that several young men were employed by them I think first drew my attention to it.

It is agreed between counsel that the foregoing objection made by the defendant's counsel shall be understood as being made to all questions and answers hereafter occurring in this deposition, and to which such objection is applicable. 8

Q. 9. Did you, at or about that time, see any advertisement or advertisements of the Remington-Sholes or Rem-Sho typewriting machine in any newspaper published at St. Joseph, Mo.?

A. Yes.

Q. 10. Please state the name of the paper in which the advertisement of the Remington-Sholes or the Rem-Sho typewriter that you saw were published.

A. St. Joseph *Herald*.

Q. 11. By whom, or by what concern, were the so-called Remington-Sholes or Rem-Sho typewriting machines advertised and offered for sale at St 9
Joseph, Mo.

A. The Diamond Supply Co.

Q. 12. Please state the location in St. Joseph, Mo., of the Diamond Supply Co.

A. No. 319 and 321 North Third street.

Q. 13. Did you at any time see any advertisement of any character whatever for typewriting machines in the store window of the Diamond Supply Co. If so, please state the character and description thereof.

Defendant's counsel further objects to the foregoing question and any answer that may be made thereto, for

10 the reason that said question calls for secondary evidence, that it has not been shown that any such advertisements as called for by the question were made with the knowledge, authority or consent of the defendant or of any one authorized to act in its behalf, or of the Remington-Sholes Co., or of any one authorized to act in its behalf in such matters; and it is agreed between counsel that without repetition this same objection shall be understood as being made to any question and answer occurring in this deposition and
11 to which such objection may be applicable.

A. Yes. At one time they displayed in the window a sign containing the word "Remington." The sign was about six or eight inches wide and from five to six feet long, reaching from one side of the window to the other.

Q. 14. What was the character of the sign displayed in the window of the Diamond Supply Co., and containing the word "Remington" with respect to the material composing it?

A. It looked to be made of paper.

Q. 15. At about what date did you see this sign
12 containing the word "Remington" displayed in the window of the Diamond Supply Co. at St. Joseph?

A. Sometime in the early part of May, 1899.

Q. 16. So far as you know, did the Diamond Supply Co. at that time, or at any other time, have any "Remington" machines, or were they advertising or offering for sale any Remington typewriting machines.

A. No.

Q. 17. Please state your understanding of the acceptance or meaning by the trade of the word "Rem-Sho."

A. Usually taken as an abbreviation of "Remington-Sholes."

Cross-examination by Mr. Fisher.

Counsel for defendant without waiving the objections heretofore made in the course of this deposition, but giving notice upon the record that at the proper time he will move that the questions and answers objected to be suppressed, makes the following cross-examination *de bene esse*.

xQ. 18. What was your bnsiness before you entered the office of Wyckoff, Seamans & Benedict at St. Joseph?

A. Salesman at the Kansas City office Wyckoff, Seamans & Benedict for about a year.

xQ. 19. By whom were you employed, and what was your business prior to your entering the Kansas City office of Wyckoff, Seamans & Benedict.

A. Acting Secretary of the Young Men's Christian Association at Clinton, Iowa.

xQ. 20. Had you had any experience in selling typewriting machines before entering the employment of Wyckoff, Seamans & Benedict.

A. No.

xQ. 21. You have stated that you saw an advertisement relating to the Rem-Sho typewriter in the St. Joseph *Herald*, about the first of May, 1899. Please state all that you recall with respect to the subject matter of such advertisement.

A. Well, I can't state very much about it in particular any more than it resembled in general appearance an advertisement which the Remington people had at about the same time in the same paper.

xQ. 22. Can you not state what you recall of the printed matter of said advertisement.

A. I can't state anything in particular. I didn't pay a great deal of attention to it at the time, but mailed a copy of the paper to the Kansas City office of my firm.

xQ. 23. Can you not recall anything of that advertisement?

16 A. I can recall a large cut of the machine, the Rem-Sho typewriter. I mean a cut of the Rem-Sho typewriter.

xQ 24. Can you not recall anything else.

A. I can't recall any particular wording any more than it was advertised by the Diamond Supply Co.

xQ. 25. Why did you send a copy of that particular paper to your Kansas City office.

A. Because I always send everything of that nature to them, showing what is done by other companies in my territory.

xQ. 26. The St. Joseph office is under the control of the Kansas City office of Wyckoff, Seamans & Benedict, is it not?

17 A. Yes, Sir.

xQ. 27. Had you received instructions from the Kansas City office of Wyckoff, Seamans & Benedict or from any office of Wyckoff, Seamans & Benedict, to send the advertisements of rival machines to such office? Or to keep such office advised as to what rival manufacturers were doing?

A. That is a standing order with our company. Not exactly an order but an understanding that salesman are to keep them posted on all that transpires in their territory.

xQ. 28. I call your attention to an advertisement of the Rem-Sho typewriter, and ask you to state whether you recall ever having seen such adver-

18 tisement before or not, and if so, when and where?

A. As near as I can remember this ad. which you call my attention to appeared in the St. Joseph *Herald*, about April 30th, 1899, a copy of which is the one I forwarded to our Kansas City office.

It is stipulated between counsel that opportunity shall be afforded defendant's counsel to compare the advertisement just shown the witness with complainant's exhibit "W. S. & B. vs. Howe Scale Co., of 86, for identification St. Joseph Sunday *Herald*, April 30th, 1899, L. M. B. Sp. Exr." and that in event said

advertisement differs from said exhibit 19
defendant's counsel may then introduce
the same in evidence *nunc pro tunc.*

xQ. 29. In the course of your direct examination you have referred to a sign which you stated that you saw in the window of the Diamond Supply Co. some time in the early part of May, 1899. State, if you recall, what was the color of that sign.

A. I can recall it was red and some other color, whether white or black I don't remember, but a large proportion of it was red, so that it attracted my attention.

xQ. 30. Do you mean that the body of the sign was red, or that the letters were printed in red? 20

A. Well, that is what I don't remember. I can just remember that there was red in its composition.

xQ. 31. But you do not recall whether the entire body of the sign, except the lettering, was red or not. Is that correct?

A. Yes.

xQ. 32. I call your attention to the picture of a sign on "Defendant's Exhibit Remington-Sholes sign circular letter," and ask you to state how the sign shown by this exhibit compares with the sign which you say you saw in the window of the Diamond Supply Co.?

A. It is nothing like it.

xQ. 33. State all that you recall with regard to 21
the subject-matter of the sign concerning which you have just been testifying?

A. It was simply the word "Remington."

xQ. 34. Are you positive that nothing else appeared upon that sign?

A. Yes.

xQ. 35. Is it your recollection that there was no other word upon the sign?

A. That is my recollection.

xQ. 36. And you are prepared to state this positively, are you?

A. Yes, sir.

22 xQ. 37. When did you last see that sign?

A. I don't know the exact date, but as I recollect it was in the early part of May, 1899.

xQ. 38. Did you notify the Kansas City office with respect to that sign?

A. I did not by letter, but I may have spoken to the manager at that time. I remember I had some conversation with him about it about that time.

xQ. 39. Did you have any conversation or correspondence with any one else respecting that sign?

A. No one but my clerk.

xQ. 40. How often did you see that sign in the window of the Diamond Supply Co.?

A. Not more than two or three times, probably
23 not more than two times.

xQ. 41. How long did it remain in the window of the Diamond Supply Co.?

A. I have no positive knowledge, but I should judge about a week.

xQ. 42. Do you know for what reason it was removed?

A. No, sir.

xQ. 43. Did you speak to any one connected with the Diamond Supply Co. in regard to that sign?

A. No, sir.

xQ. 44. How far is the office of the Diamond Supply Co. from the St. Joseph office of Wyckoff, Seamans & Benedict?

24 A. About six blocks.

xQ. 45. Did you have occasion to pass the office of the Diamond Supply Co. frequently?

A. Not frequently.

xQ. 46. You know, do you not, that the Diamond Supply Co. handles bicycles?

A. Yes, sir.

xQ. 47. And you know that it was handling bicycles at the time it advertised in the St. Joseph *Sunday Herald*, I mean about April 30th, 1899?

A. Yes.

xQ. 48. Do you know whether the Diamond Supply Co. were agents for, or were handling the Remington Bicycle?

A. I don't know. 25

xQ. 49. The Diamond Supply Co. at the time you saw the advertisement in the St. Joseph *Herald*, and at the time you saw the sign, in its window, was also dealing in fire-arms, I mean sporting fire-arms?

A. I think it was.

xQ. 50. Do you know whether it was handling, or was agent for the Remington Shot Gun? Or the Remington Rifle?

A. I do not know.

xQ. 51. When were you last in the store of the Diamond Supply Co.?

A. I don't think I have ever been in their office, personally.

xQ. 52. Do you know any one connected with 26
the Diamond Supply Co.?

A. No, sir, not acquainted with them.

xQ. 53. Have you ever seen any of the business cards of the Diamond Supply Co. in which the Rem-Sho typewriter was advertised?

A. No, Sir, I have not.

WILLIAM A. CATLIN, of lawful age, a witness produced on behalf of complainant, after being duly cautioned and sworn to testify the whole truth, did testify as follows:

*Direct examination by Mr. McRoberts:*

27

Q. 1. Please state your name, age, residence and occupation.

A. William A. Catlin, 35, resident manager of Wyckoff, Seamans & Benedict, at Kansas City, Mo.

Q. 2. As resident manager of the Kansas City office for Wyckoff, Seamans & Benedict, please state the nature and character of your work and duties.

A. Such as would fall to the manager of a branch office, looking out for the interests of my employer.

Q. 3. Have you general supervision and charge of the salesmen connected with that office?

A. I have.

550

28 Q. 4. What materials or machines are sold by the salesmen and yourself as representatives of Wyckoff, Seamans & Benedict at Kansas City?

A. Remington typewriter, typewriter furniture, and typewriters' supplies.

Q. 5. Have you heard of a typewriting machine manufactured by the Remington-Sholes Company in Chicago, and if so, how in general is that machine known to the trade and public?

It is stipulated between counsel in order to save repetition of objections, that the several objections made by counsel for defendant during the examination of the preceeding witness, Mr. Holton, shall be understood as made to all
29 questions in this deposition, to which such objection may be applicable.

A. I have; I have heard it called Remington-Sholes, and Rem-Sho. In the typewriter trade it is known as the Rem-Sho, and Rem-Sho is known as an abbreviation.

Q. 6. Of what is the name Rem-Sho understood in the trade to be an abbreviation?

A. Of Remington-Sholes.

Q. 7. Is there a paper published in Kansas City and has it been published for some time, called the *Kansas City Star*, and is it of general circulation—that is, so far as you know?

30 A. There is such a paper, and it is regarded as the leading paper in the city.

Q. 8. Is the *Kansas City Star*, to your knowledge, circulated at Kansas City, Mo.? Is it a paper of general circulation?

A. It is.

Q. 9. I hand you what purports to be a copy of the *Kansas City Star*, dated Friday, October 19, 1900, and ask you if you have ever seen this particular copy before, and if so, what you know about it?

A. I have seen this copy before. I procured this particular copy from the executive office of the *Star* yesterday.

Q. 10. I call your attention to an advertisement 31
appearing on page 15 of the copy of the *Kansas City Star* which you have just identified as one obtained by you yesterday at the office of that paper, and ask you if you have seen this advertisement before, and if so, what you know about it?

A. I have seen this advertisement before, on the morning of October 20th, 1900; stenographers called at our office, the Kansas City office of Wyckoff, Seamans & Benedict, 105 West Ninth Street, saying they had called in answer to our advertisement and wanted to know where the positions were.

Q. 11. Did you personally talk with any of the persons who called at the Kansas City office of Wyckoff, Seamans & Benedict, in relation to this 32
advertisement or in response thereto?

A. Yes, I talked with two or more; and one over the telephone.

Q. 12. Approximately how many calls were there at the Kansas City office of Wyckoff, Seamans & Benedict, in response to this advertisement to which you have referred?

A. Fully three, if not five, and two over the 'phone.

Q. 13. Did these persons who called in response to this advertisement apply for positions as stenographer, or solicit positions of stenographer in response to this ad.?

A. We maintain an employment department, 33
through which we assist stenographers to obtain employment. They thought that we were short of stenographic help and applied for our assistance.

Q. 14. And were their applications made in consequence or as a result of this advertisement?

A. Those who called said that they had called in response to our advertisement; those who called us over the 'phone said they noticed we had an advertisement in the *Star*, and wanted to know where the positions were.

Q. 15. These callers referred to this particular advertisement which you have identified?

34 A. They said, "You have an advertisement in the *Star*."

Q. 16. Had you, as manager of the office of Wyckoff, Seamans & Benedict, or had anybody connected with that office, to your knowledge, inserted the advertisement for stenographers appearing on page 15 of the *Kansas City Star*, to which you have just referred?

A. Most certainly not.

Q. 17. Had you on that day, or had anybody for you, to your knowledge, inserted an advertisement for stenographers in any paper published at Kansas City, Mo.?

A. No such advertisement was inserted with my
35 authority, either directly or indirectly, and when my attention was called to an advertisement which people said was ours—Wyckoff, Seamans & Benedict—I was surprised, and denied that there was such an advertisement in the paper.

Q. 18. Did these people who called, either in person or over the telephone, in response to this advertisement, state or say that the Wyckoff, Seamans & Benedict office had an advertisement on that day?

A. They said "we notice your advertisement for stenographers."

Counsel for complainant now offers in
36 evidence the advertisement entitled "3 Stenographers Wanted." appearing near the bottom of the first column of printed matter on page 15 of the Kansas City *Star* dated Friday, October 19th, 1900, just identified by the witness, and the same is marked "Wyckoff, Seamans & Benedict *vs.* Howe Scale Co., of 86, Complainant's Exhibit Kansas City *Star* advertisement."

Counsel for defendant objects to the introduction of the exhibit and to all questions and answers with respect thereto, for the reasons set forth in

the objections made in the course of 37
the deposition of the preceding witness, Mr. Holton, and particularly for the reason that no foundation has been laid for any such line of testimony, and that the same is therefore not proper rebuttal.

Q. 19. I call your attention to the fact that the advertisement just offered in evidence contains the direction "Apply Rem-Sho Typewriter office, 25 E. 9th street," and I will ask you if at that time, to your knowledge, there was an office for the sale of Remington-Sholes or Rem-Sho typewriting machines at that street and number. 38

A. It was generally understood that a business college at this address represented the machine—the Remington-Sholes typewriter.

Defendant's counsel objects to the last answer as hearsay.

Q. 20. Please state, if you know, the name of the business college at this address.

A. I cannot state positively, for I always get the name confused with another in a different block. I think it is the Kansas City Business College, or the National Business College.

Q. 21. Did the business college at 25 E. Ninth street, Kansas City, Mo., display any sign or adver- 39
tisement of any typewriting machine?

A. They did.

Q. 22. What was on this sign?

A. I can't say positively, but either "Remington-Sholes" or "Rem-Sho."

Q. 23. I hand you a letter on a letterhead of the Crescent Produce Co., of Newton, Kansas, and dated October 27th, 1900, and addressed "Remington Typewriter Co., Kansas City, Mo.," and ask you if you have seen the same before, and if so, what you know about it.

40 A. I have seen it before. I was the one who opened the envelope when received through the mail containing this letter.

Q. 24. Have you the envelope in which this letter was enclosed?

A. I have not. Customarily when I open up the mail, I throw the envelope under my desk, and they are taken away each evening by the porter.

Q. 25. The letter which you have just identified is addressed—"Remington Typewriter Co., Kansas Mo." Does the Kansas City office of Wyckoff, Seamans & Benedict frequently receive letters intended for it and addressed as this one is addressed —"Remington Typewriter Co."?

41 A. A very fair percentage of our daily mail comes addressed "Remington Typewriter Co." In fact I can safely say, based on my experience as a salesman and manager, that the firm of Wyckoff, Seamans & Benedict is better known as the "Remington Typewriter Concern" than by the name of Wyckoff, Seamans & Benedict.

Q. 26. Had the Kansas City office of Wyckoff, Seamans & Benedict, or any of its representatives, so far as you know, had any business dealings with the Crescent Produce Co., of Newton, Kansas?

A. I do not recall any.

Q. 27. At or about the 27th of October, 1900, had a representative of the Kansas City office of Wyck-
42 off, Seamans & Benedict, so far as you know, or have been able to ascertain, called at the office of the Crescent Produce Co., of Newton, Kansas, on any business referred to in this letter?

A. Not for two weeks or more previous to the receipt of this letter. Upon receipt of the letter I immediately wrote to our resident salesman at Wichita to go to Newton and see what was the trouble, if the people were dissatisfied with their Hammond typewriter it might be an opportunity for him to do some business with them.

Q. 28. And what information did your Wichita

representative impart to you as a result of his visit 43
to the Crescent Produce Co., at Newton?

Counsel for defendant, in addition to emphasizing the objections which under the stipulation made between counsel shall apply to this and other like questions propounded to this witness, desires to protest upon the record against this line of examination which counsel must know is manifestly improper, and is an abuse of the equity procedure as to taking depositions.

A. They did not refer to him—the Remington salesman, but wanted to see salesman who had 44
formerly sold the Hammond typewriter and now they thought was selling the Remington

Q. 29. Was Newton, Kansas, at the date of this letter, October 27, 1900, a part of the territory of the salesman of the Remington typewriting machines who was located at Wichita?

A. It was.

Q. 30. And it was not the salesman at Wichita to whom the Crescent Produce Co. referred in their letter of October 27th, 1900?

A. It was not.

Q. 31. Please state, if you know, to whom reference is made in the letter of the Crescent Produce Co. as "a representative for your machine." 45

A. I would not hesitate to swear they have reference to Mr. Heater.

Q. 32. What is Mr. Heater's business and with what company was he connected at that time if you know.

A. At the time that letter was received he was a traveling salesman for the Remington-Sholes type writer.

Counsel for complainant now offers in evidence the letter upon the letterhead of the Crescent Produce Co., and which has just been identified by the witness,

46 and the same is marked "Wyckoff, Seamans & Benedict, *vs.* Howe Scale Co., of 86, Complainant's Exhibit Crescent Produce Co. letter."

It is understood between counsel that the objections heretofore made by counsel for defendant shall apply to the introduction of this exhibit.

Cross-examination by Mr. Fisher:

Counsel for defendant, without waiving the objections heretofore made in the course of this deposition, but giving notice upon the record that at the
47 proper time he will move that the questions and answers objected to be suppressed, makes the following cross-examination *de bene esse*.

xQ. 33. Have you ever been employed by any other typewriter concern besides Wyckoff, Seamans & Benedict?

A. No.

xQ. 34. Do you know whether any advertisement had been caused to be published in the Kansas City *Star* by the Kansas City office of Wyckoff, Seamans & Benedict between the 15th and 19th of Oct. 1900?

48 A. We have been advertising in the Kansas City *Star*, but I am not prepared to say whether one of our advertisements appeared between the dates you mention.

xQ. 35. State, if you know, how many pages the Kansas City *Star* of Oct. 19th, 1900, consisted of.

A. I have not counted, but the copy I produced is a complete copy as delivered to me by the executive office of the *Star*.

xQ. 36. When did you first see a copy of the Kansas City *Star* of Oct. 19th, 1900?

A. I may have read it the evening of Oct. 19th, but I positively had one in my possession the morning of the 20th.

xQ. 37. When did you first notice the advertise- 49
ment appearing near the bottom of the left hand column of the 15th page of the Kansas City *Star* of Oct. 19th, 1900?

A. After the second call at the office, I called up the purchasing agent of the Kansas City *Star*, with whom I am well acquainted, and stated that people were calling at the office, claiming we had an advertisement in the paper, but I had not authorized one, and asked him would he please investigate. He said he would investigate and call me up. In a few minutes he did so, and said that there was a Rem-Sho advertisement; wanted to know if that was our concern, and I said no. I then sent the young man in charge of the employment department to the Star 50
office, who procured a paper, and it was upon his return that I read the advertisement.

xQ. 38. And that was the first time that you saw that advertisement was it not?

A. It was.

xQ. 39. When did you next see that advertisement?

A. I could not give the exact date, but it was when I was requested to procure a copy to be sent to New York.

xQ. 40. To whom in New York did you send a copy?

A. Wyckoff, Seamans & Benedict.

xQ. 41. What did you do with the first copy of 51
the Kansas City *Star* of Oct. 19th, 1900, that you procured?

A. I threw it away.

xQ. 42. Did you tell any one connected with Wyckoff, Seamans & Benedict that you had seen this advertisement in the Kansas City *Star* of Oct. 19th, 1900?

A. I communicated with them, saying what I knew.

xQ. 43. With whom did you communicate in this matter, when did you communicate with them, and in what way?

52 A. I communicated with Wyckoff, Seamans & Benedict, New York, No. 327 Broadway. I cannot give the exact date—it was either on the 20th or 22d of October, 1900, and was by letter.

xQ. 44. What instructions or directions, if any, had you had that caused you to communicate with the New York office of Wyckoff, Seamans & Benedict with regard to this advertisement in the Kansas City *Star* of October 19th, 1900?

A. I had not received any instructions, and was very much amused to think that we would get the benefit of their advertising and at their expense, and in the report of the matter to the home office I commenced the letter by saying that it was a very
53 amusing affair.

xQ. 45. Had you received any instructions, or was there any understanding with any office or officer of Wyckoff, Seamans & Benedict that led you to assume that it was your duty to send the copy of the Kansas City *Star* to them?

A. I did not send a copy of the Star to them until instructed so to do, but referred to it when first reporting it to them.

xQ. 46. Had you any instructions or understanding with any office or officer of Wyckoff, Seamans & Benedict that caused you to notify them regarding this advertisement in the Kansas City *Star*?

A. No, sir.

54 xQ. 47. Was it your practice to report to the New York office or any other office of Wyckoff, Seamans & Benedict with regard to what was being done by rival concerns?

A. It is customary for me to report all matters of interest, or at least which I may call of interest, to my employers, Wyckoff, Seamans & Benedict.

xQ. 48. What was the street number of the office of Wyckoff, Seamans & Benedict in Kansas City on Oct. 19th, 1900?

A. 105 West 9th St., which has been their office since July 15, 1899, to my certain knowledge when I went there.

xQ. 49. If I understand you correctly, none of the 55
parties who called at your office on October 19th or 20th in respect to an advertisement that had appeared in the Kansas City *Star* showed you a copy of such advertisement.

A. They did not.

xQ. 50. How long has the Rem-Sho typewriter been on sale in Kansas City?

A. Ever since I went to Kansas City, July 15th, 1899, to my knowledge.

xQ. 51. Did all the persons whom you say called at your office with respect to an advertisement in the Kansas City *Star* call on the same day?

A. They did, on the morning of Oct. 20th, 1900.

xQ. 52. What other daily papers are published 56
in Kansas City besides the *Star*?

A. *Journal*, *Times*, *World*, and some others with which I am not familiar.

xQ. 53. Does the Kansas City office of Wyckoff, Seamans & Benedict advertise in any of these other papers?

A. I have not advertised, or authorized any advertising placed in the other papers ever since I took charge of the office, July 15th, 1899. I mean by that that the office of Wyckoff, Seamans & Benedict has not done any advertising in any of these papers except the *Star*.

xQ. 54. Do you know the party by whom com- 57
plainant's Exhibit "Crescent Produce Co. Letter" was written?

A. I do not.

xQ. 55. Do you know any member of the firm of the Crescent Produce Co.?

A. I do not.

xQ. 56. Never talked with any of them I suppose?

A. Not to my knowledge.

WM. A. CATLIN.

Adjourned to Wednesday, December 5th, 1900, at 10.30 o'clock A. M.

58 Wednesday, December 5th, 1900, at 10.30 o'clock A. M. parties met pursuant to adjournment; present the same as before.

SILAS W. CRANDALL, of lawful age, a witness produced on behalf of complainant, after being duly cautioned and sworn to certify the whole truth, did testify as follows: direct examination by Mr. Donnelly:

Q. 1. Are you the Silas W. Crandall who is the manager of the Chicago office of Wyckoff, Seamans & Benedict for the sale of Remington typewriters, etc., and have you already been called and testified as a witness in this cause?

59 A. I am, and have.

Q. 2. I show you a letter and envelope; and ask you to examine the same and tell the court what you know about it.

Counsel for defendant objects to the question and any answer that may be made thereto on the ground that the same is irrelevant, immaterial and incompetent; upon the further ground that the testimony called for is not proper rebuttal, no foundation for any such testimony having been laid in the testimony taken on behalf of defendants, and upon the further ground
60 that the testimony called for is secondary and not the best evidence. And it is agreed between counsel that this same objection shall be understood as made to any and all questions and answers in the deposition of this witness to which the same is applicable; the counsel gives notice that at the proper time he will move the court that such questions and answers be suppressed.

A. I received the envelope referred to addressed "The Remington Typewriter Co., Chicago, Ill.,"

postmarked Macomb, Nov. 8, 2 P. M., 1900, bearing 61
the advertising card of the Macomb Shorthand School, Macomb, Ill., and pencil memorandum, "Madison St., near Clark, opened by mistake, Remington-Sholes Co.," in its present condition, that is, open, and containing the letter which is before me, written on the stationery of the Macomb Shorthand School, Macomb, Ill., dated Nov. 6th, addressed Remington Typewriter Co., Chicago, Ill., and signed I. F. Meyer with a pen, on Nov. 10th, 1900, by hand of the letter carrier, with our regular mail. The letter referred to the fact that a Miss Lizzie Davis, who had been a student at the Macomb Shorthand School, had applied to our position department to secure a situation, and to some difficul- 62
ty she had in taking an examination required by the manager of the department before allowing her to register. On due inquiry, I learned that such a person had applied at the department, had been given an examination, and the letter referred to facts that were known to us in our regular transaction of business, and was undoubtedly intended to be addressed to us.

Q. 3. Can yon say in whose handwriting the words "Opened by mistake—Remington-Sholes Co." are?

A. I recognize the handwriting as the same in all particulars as I have seen on many envelopes addressed "The Remington Typewriter Co., Chicago, 63
Ill.," which have been delivered to us on former occasions in the same condition.

Q. 4. Do you or not recognize it as the handwriting of some person in the service of or connected with the Remington-Sholes Co.?

A. Yes, sir.

Q. 5. I now hand you sundry other papers and ask you to examine them separately, and after you have done so state what you know about them and whether or no said papers or any of them were intended for Wyckoff, Seamans & Benedict or the concern of which you are the resident manager in Chicago?

64 A. I hold in my hand an envelope bearing the advertising card of the Elkhart Normal School and Business Institute, Elkhart, Ind., postmarked Elkhart, Ind., Jan. 30, 11 A. M., 1900, addressed "Remington Typewriter Co., Chicago, Ill.," having written across the face thereof with pencil, "Opened by mistake, Remington-Sholes Co.—F." In the same handwriting as other envelopes have been written on and in regard to which I have testified. Said envelope being now in the same condition as when received by me, that is, opened from the letter carrier with our other mail, and which envelope contained a letter dated at Elkhart, Ind., Jan. 29th, 1900, addressed to Remington Typewriter Co., Chi-
65 cago, Ill., with an office receiving stamp thereon, "Received Jan. 31st, 1900, answer dictated by "and signed in pen and ink 'H. A. Mumaw.'" Also enclosed in the same envelope a pencil memorandum in the same handwriting as the signature just referred to, initialled "M," and also enclosed therewith a check dated Elkhart, Ind., Jan. 29th, 1900, on the Indiana National Bank, payable to the order of Remington Typewriter Co., for $46.00, signed H. A. Mumaw. The said envelope, letter, pencil memorandum and check being enclosed in a larger envelope which was inadvertently destroyed by the clerk who opened the mail, but accompanying the said enclosure already referred to was the
6 letter on the stationery of the Remington-Sholes Co. dated Jan. 31st, addressed Wyckoff, Seamans & Benedict, Chicago, Ill., signed on the typewriter, "Remington-Sholes Co." initialled in pencil "F."

I correct myself by recalling the fact that after due search among envelopes by the cashier, the large envelope bearing the advertising card of the Remington-Sholes Co. postmarked Chicago, Jan. 31st, 8:30 P. M., 1900, addressed Wyckoff, Seamans & Benedict, was found, and is now before me with other papers just referred to.

Q. 6. Will you please state whether or not the Mumaw letter of January 29th, 1900, and the check

of the same date and other papers, addressed to the 67
Remington Typewriter Co., to which you have referred to in your preceding answer, were intended for Wyckoff, Seamans & Benedict, or the concern for which you are resident manager in the city of Chicago?

A. They were. The correspondence related to facts that had been otherwise the subject of correspondence and personal conversation, and Dr. Mumaw owed us on account, and the remittance was the result of a recent communication to him on that subject.

The envelope and letter purporting to have been sent by the Macomb Shorthand School of Macomb, Ill., are 68
offered in evidence and marked "Complainant's Exhibit Macomb Shorthand School Letter and Envelope."

Complainant's counsel next offers in evidence the several papers relating to the Mumaw transaction, and the same are filed in evidence and marked "Complainant's Mumaw Exhibits, Nos. 1, 2, 3, 4, 5, 6 and 7."

Defendant's counsel objects to the introduction of the exhibit for the reasons given immediately after Question 2 of this deposition.

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Q. 7. In your experience in managing the business of Wyckoff, Seamans & Benedict in the city of Chicago, Ill., and in the sale of typewriting machines, please state what are the classes of customers or persons who purchase typewriting machines. I mean, are they simply operators who operate machines or are there other persons besides those who purchase typewriters?

A. The purchasers of typewriters, to a very large extent, do not personally operate the typewriter.

Q. 8. State whether or not in your experience in the sale of typewriting machines there is a class of

70 purchasers who are not familiar with the structure or mode of operation of the machine which they purchase.

A. It is the exception that the buyer of a typewriter possesses any information in detail whatever of the typewriter. He scarcely has more than a very general idea of the form of a writing machine.

Q. 9. Is it according to your knowledge or experience that persons purchasing typewriting machines ever do so without personal inspection or examination thereof?

A. It is the rule in the larger cities that the business man does not even examine the typewriter that he buys. He buys the machine that he learns of in
71 divers ways that we all learn about things of this world that are not immediately connected with our particular calling, and of the particular salesman that has interested him in the thing that he is about purchasing.

Q. 10. Does he buy or purchase to some extent or to any extent on the reputation of the machine which he purchases or intends to purchase?

A. In stating in my last answer that he buys on account of a general information that he possesses, I had in mind the fact that the reputation of an article, particularly of a typewriter, its good will in the estimation of the public was the most important fact connected with the sale of the article or a type-
72 writer. The reputation of the typewriter is probably more advantageous than a complete selling organization. Its value is inestimable.

Q. 11. And how, if at all, is that reputation associated with the name by which the machine is designated or known to the public?

A. The name and the reputation of the Remington Typewriter are synonymous terms. We meet with this fact every day personally, and in correspondence, particularly in talk with competitors and competitors' salesmen, in the evident desire of competitors' salesmen to associate themselves with our organization, receiving applications from them often

and repeatedly, being assured by them that if they 73
could make even an humble record with another machine, with the Remington they could make a brilliant success. With conversations with customers, past and prospective, our attention often being called to the fact that a machine they have bought, used before, had given especial satisfaction, and that they were pleased to duplicate the purchase, because of the fact, and considered that the name was synonymous for good principle, selection of material, workmanship and finish; and we have had our attention also called to this fact by manufacturers and tradesmen in other lines of business by using some expression, for instance, "as good as the Remington," or "The Remington is synony- 74
mous with the best." I particularly recall this last expression used by the leading manufacturers in their line—the Hartley-Graham people in the manufacture and sale of bicycles, who adopted the name "Remington" for their product.

Q. 13. Does Wyckoff, Seamans & Benedict manufacture, and do they sell to their various agencies, what is known as the Remington No. 6 typewriter?

A. Yes, sir.

Q. 14. Is that a number and model of their machine that is largely manufactured, sold and used?

A. It is, and has been for five years our most popular style of model.

Q. 15. Do you know whether or not the Reming- 75
ton-Sholes Co. have recently placed upon the market a typewriting machine that is designated as a "Rem-Sho" or "Remington-Sholes No. 6?"

A. Yes, sir, by common report.

Q. 16. Have you seen and examined such machine?

A. I have not. In learning about this machine by divers reports and information given us by customers and those who have seen it, I learn that it is quite similar in its general effect and appearance to the No. 6 Remington Typewriter.

Counsel for defendant desires at this point to emphasize the objections here-

76 tofore made, and which are understood to be made to the questions and answers of this witness, and desires further to protest upon the record against this line of examination, which complainant's counsel must know is totally unwarranted either as proper rebuttal testimony or as primary evidence.

Cross-examination by Mr. Fisher:

Counsel for defendant, without waiving his objection to the entire deposition of this witness for the reasons stated
77 during the direct examination, makes the following cross-examination *de bene esse*.

xQ. 17. Is the Chicago office of Wyckoff, Seamans & Benedict the largest of the offices of said concern?

A. Excepting the New York office in the United States, yes.

xQ. 18. What territory is controlled by the Chicago office?

A. Two-thirds of the State of Iowa, that is, eastern one-half (that is the northern) of Illinois; about a half a dozen of the Northwestern counties of Indiana. In my answer to the last question I
78 referred in the use of the term "largest" to the output and not territory in respect to square miles.

xQ. 19. About how many letters are received each day at the Chicago office of Wyckoff, Seamans & Benedict, I mean letters intended for that concern?

A. As I have not counted the letters I will answer the question by stating that we have more than thirty salesmen of all classes, correspondence and sub-dealers, who report to us daily and in addition thereto we are receiving daily from our customers remittances in payment of accounts and occasional inquiries from prospective purchasers, although comparatively few, as our organization is such that they are anticipated by personal work. The mail

might be on a very dull day from 25 to 50 or 100 to 79
something above that number on a busy day. But most of our mail is from members of our own organization and the settlement of bills, on which the most conspicuous term used is "Wyckoff, Seamans & Benedict, Chicago." I will say in explanation of this remark, that we have in the past printed cautions to correspondents to address all communications to the house, designating in so many words the name of the house, Wyckoff, Seamans & Benedict, to avoid the confusion arising from having communications addressed to individual employes; so that the trade for the most part has in 18 years been educated so that we are addressed by the name of Wyckoff, Seamans & Benedict, although even our 80
most well-known customers prefer to address us, and do address us, every day by the name that is associated with us in the minds of the public—"The Remington Typewriter Co."

xQ. 20. About what proportion of the mail received at the office of Wyckoff, Seamans & Benedict in Chicago is from persons other than employes of such concern?

A. Well, probably more than half are from people who are not in some way connected with us as employes or correspondents under some consideration arrangement.

xQ. 21. In selling typewriting machines is it not the custom of most of the typewriter companies to 81
place machines on trial before the sale is effected?

A. I only know by common report that that is a somewhat general custom among our competitors, and to a limited extent in the case of our own company.

xQ. 22. What is the latest number of the machine handled by you or placed upon the market by Wyckoff, Seamans & Benedict?

A. The U. S. Special Wide Carriage No. 8. The last style number is the "Number 8 Wide Carriage."

S. W. CRANDALL.

82 JOHN S. BAYES, of lawful age, a witness produced on behalf of complainant, after being duly cautioned and sworn to testify the whole truth and nothing but the truth, did testify as follows; direct examination by Mr. Donnelly:

Q. 1. Are you the John S. Bayes who is the sales manager for the sale of Remington Typewriters, etc., at the Chicago office of Wyckoff, Seamans & Benedict, and have you already been called and testified as a witness in this cause?

A. Yes, sir.

Q. 2. About how long have you been engaged in the sale of typewriting machines?

A. About seven years.

83 Q. 3. During that seven years what typewriting machine or machines have you sold?

A. The Remington, Smith-Premier, Peerless and the Jewett.

Q. 4. In your experience in the sale of typewriting machines, state what classes of customers purchase such machines.

Counsel for defendant objects to the question and any answer that may be made thereto on the ground that the same is irrelevant, immaterial and incompetent; upon the further ground that the testimony called for is not proper rebuttal,

84 no foundation for any such testimony having been laid in the testimony taken on behalf of the defendants. And it is agreed between counsel that this same objection shall be understood as made to any and all questions and answers in the deposition of this witness to which the same is applicable; the counsel gives notice that at the proper time he will move the court that such questions and answers be suppressed.

A. Merchants, manufacturers, attorneys, stenographers and all kinds of business and professional people.

Q. 5. Speaking from your own knowledge and ex- 85
perience, state whether or not you have found a class or classes of customers who purchase typewriting machines that are not familiar with the structure, mode of operation and appearance of the different typewriting machines on the market, and are not familiar with the differences between them.

A. Yes, sir; I think that could be said of the majority of buyers.

Q. 6. To what class or classes of customers does that apply?

A. It would apply to those who do not operate the machines personally, but employ stenographers; they have no personal knowledge, as a rule, of the mechanical construction and general appearance of 86
typewriters.

Q. 7. Speaking from your experience and knowledge, to what extent does that class of customers purchase typewriting machines upon the reputation of the machine or in virtue of any name or names associated with such machine or machines?

A. I should say sixty per cent. of them.

Q. 8. In your experience in the sale of the Remington typewriter, what is your observation and experience as regards the name of that machine as it is known to the public, and associated with the reputation of the machine? And as a factor in the sale of the machine?

A. The Remington is very widely and favorably 87
known by typewriter users, and the general reputation of the machine no doubt affects the sale materially of typewriters. It is frequently said by a typewriting salesmen who represent other machines that theirs are as good as the Remington, and the question is frequently asked by the public whether such and such a machine is as good as the Remington.

Q. 9. According to your experience and observation, to what extent is the name "Remington," as it is associated with the machine so designated, a controlling factor in the sale of that machine?

88 A. That is pretty hard to say. I don't believe that it would be possible for to sell 25 per cent. of the number that are now being sold if the name was taken off and it was marketed as another machine.

JOHN S. BAYES.

Defendant's counsel declines to cross-examine.

J. FRANKLYN HOBBS, of lawful age, a witness produced on behalf of complainant, after being duly cautioned and sworn to testify the truth, and nothing but the truth, did testify as follows:

*Direct examination by Mr. McRoberts:*

89 Q. 1. Please state your name, age, residence and occupation.

A. J. Franklyn Hobbs; 30 years; Chicago, Ill.; salesman for the United Typewriter & Supplies Co.

Q. 2. How long have you been a salesman for the United Typewriter & Supplies Co.?

A. At this time since September 1, 1900.

Q. 3. Prior to September 1, 1900, what was your occupation?

A. Manager of the Chicago office of the retail department of the Remington-Sholes Co.

Q. 4. Was and is the Remington-Sholes Co., to which you refer in your previous answer, the manufacturer of the so-called Remington-Sholes or Rem-
90 Sho typewriting machines?

A. It is.

Q. 5. How long were you the manager of the Chicago office of the Remington-Sholes Co., for the sale of Remington-Sholes or Rem-Sho typewriting machines?

A. From January 2d, 1899, to August 25, 1900.

Q. 6. Please state, if you know, how during that time the telephone calls or the numbers of the telephones of the Remington-Sholes Co. and of the Chicago office of Wyckoff, Seamans & Benedict for the sale of Remington typewriting machines, were

arranged respectively in the call book of the Chi- 91
cago Telephone Co.

Counsel for defendant objects to the question and any answer that may be made thereto on the ground that the same is irrelevant, immaterial and incompetent; upon the further ground that the testimony called for is not proper rebuttal, no foundation for any such testimony having been laid in the testimony taken on behalf of defendants, and upon the further ground that the testimony called for is secondary and not the best evidence. And it is 92
agreed between counsel that this same objection shall be understood as made to any and all questions and answers in the deposition of this witness to which the same is applicable. The counsel gives notice that at the proper time he will move the Court that such questions and answers be suppressed.

A. The name "Remington-Sholes Co." appeared just before the name "Remington Standard Typewriter," but I do not remember the location of the name Wyckoff, Seamans & Benedict."

Q. 7. During the time that you were the manager of the Chicago office of the retail department of the 93
the Remington-Sholes Co., where was your office located?

A. At room 204 Champlain Building, 126 State Street, until April 25th, 1900, and after that at 85 Dearborn Street.

Q. 8. While you were manager of the Chicago office of the Remington-Sholes Co., were telephone calls received at that office of such character and nature as were not intended for the Remington-Sholes Co., and if so, please state the nature of the calls, and what was said by the caller or callers?

94 A. After our telephone number was changed from Main 3036 to Central 1404 we received numerous calls to repair Remington typewriters. The callers usually asked if this was the Remington typewriter, or the Remington Company; but sometimes simply asked for repair man.

Q. 9. What was the occasion or purport of these calls upon the telephone of the Chicago office of the Remington-Sholes Co. wherein the callers asked if this was the Remington Co., etc.?

A. Our telephone number had been changed, and I believe the number of the Remington Typewriter had been changed at about the same time, which probably caused the confusion.

95 Q. 10. What was the substance of these calls, or what statements or requests were made by the callers?

A. I think in most cases they asked for a repair man to adjust Remington machines.

Q. 11. And in response to these calls asking for repair man to adjust Remington machines, were repair men in the employ of the Remington-Sholes Co. sent to the callers for the purpose of making repairs?

A. The employees answering the telephone were instructed to explain that this was the Remington-Sholes Co., but in some cases the customers asked if we could repair their Remington machines, and
96 were told that we could do so, and a repair man sent.

Q. 12. How often, approximately, were calls received at the Chicago office of the retail department of the Remington-Sholes Co. of the nature and character described in your previous answers?

A. Some times several in one day, but an average, I think, of not more than one or two per day.

Q. 13. But as a general rule, there was one or more such calls on each business day during the time that you were manager of the retail department of the Remington-Sholes Co.?

A. We got few, if any, such call suntil after May 97
1st, 1900, when the telephone number was changed. It was after that that such calls were received.

Q. 14. In cases where such calls were received and answered, and in response thereto Remington typewriters were adjusted or repaired by the repair men from the retail office of the Remington-Sholes Co., were bills rendered and collections made for such repair work?

A. Yes, sir.

Q. 15. During the time that you were manager of the Chicago office of the retail department of the Remington-Sholes Co., for the sale of Remington-Sholes typewriting machines, was it the custom of your office in making sales to receive in exchange 98
second-hand or old machines as part consideration for the Remington-Sholes machine or machines that were sold by the salesmen of that office?

A. It was.

Q. 16. As such custom, were any machines known as the Remington Typewriter, or Remington typewriter machines, so received by your office?

A. Yes, a large number of them.

Q. 17. Were any of the Remington Typewriting machines that were so taken and received at your office ever displayed in any manner in or about the office of the retail department of the Remington-Sholes Co., and if so, how?

A. They were displayed on the show tables and 99
sometimes in the show window.

Q. 18. As the manager of the Chicago office of the retail department of the Remington-Sholes Co., can you state how many such instances of the display of Remington typewriting machines either on the show tables or in the show window of the Remington-Sholes Co.'s office were made.

A. The machines were displayed during nearly the entire period that I was with the company.

Q. 19. Are you at present engaged in the sale of typewriting machines?

A. I am.

100 Q. 20. Do you know whether or not the Chicago office of the retail department of the Remington-Sholes Co. now has a salesman whose special work it is to buy in second-hand or old machines of other makes or receive them as part payment for Remington-Sholes machines?

A. They have had a man for some time past whose business it was to dispose of the old machines which were taken in exchange by the Remington-Sholes Co.

Q. 21. Was such the practice at any time during the period that you were manager of the Chicago office of the Remington-Sholes Co.

A. I always attended to that work myself until
101 after I had resigned my position, when a party was engaged for that purpose.

Q. 22. At the time, in January, 1899, that you assumed the position of manager of the Chicago office of the retail department of the Remington-Sholes Co. for the sale of the so-called Remington Sholes or Rem-Sho typewriting machine, was there any fixed price at which the Remington-Sholes typewriting machines were sold, and if so, what was it?

A. The price of the machine was given in the printed price list as $97.50, but the machines were sold at various prices.

Q. 23. Can you state at what prices the Reming-
102 ton-Sholes typewriting machines were sold while you were the manager of the Chicago retail office?

A. I established a price list giving ten per cent off on cash deals, 20 per cent off to users of more than 10 machines and 25 per cent off to users of more than 25 machines. There were some exceptions to this schedule.

Q. 24. With respect to the price of the Remington-Sholes machines, what was the nature of these exceptions?

A. Where competition was keen and the concern's business of importance to us, we quoted a lower figure.

Q. 25. Can you state what figures were quoted 103
and accepted in such exceptional cases, or any of them?

A. I sold machines as low as $65.00, being the No. 4 pattern. And No. 2 machines as low as $60.00.

Q. 26. Were sales of the No. 4 pattern Remington-Sholes typewriters at $65.00, and of the No. 2 pattern or machine, as low as $60.00, frequently made?

A. Not very often.

Q. 27. To what extent were sales of the Remington-Sholes typewriting machines made at the discount prices referred to by you in your answer to question 23? 104

A. Probably seventy-five per cent of our sales were at those prices.

Q. 28. At the time that you were manager of the Chicago office for the sale of Remington-Sholes typewriting machines was there a model or machine made by the Remington-Sholes Co. and known as No. 6?

A. The machines were being made during the last month or two that I was with the Remington-Sholes Co., but the model had not yet been christened the "No. 6."

Q. 29. Do you know whether since that time the Remington-Sholes Co. has put upon the market, or offered for sale, a No. 6 model or No. 6 Remington- 105
Sholes machine?

A. They have.

Q. 30. Have you seen and have you examined one of these No. 6 Remington-Sholes typewriting machines?

A. I have seen a number of them, and have examined two or three.

Q. 31. Please state whether or not the No. 6 Remington-Sholes typewriting machines that you have seen and examined differ in any material structural point from the No. 4 Remington-Sholes typewriting machine?

106 A. The working parts of the No. 6 Rem-Sho machine do not differ materially from the working parts of the No. 4 Rem-Sho typewriter, with the exception of the position of the key lever spring. The frames of the two machines mentioned are radically different.

Q. 32. Please state what differences there are between the frames of the No. 6 Remington-Sholes typewriting machines, and the No. 4 Remington-Sholes typewriting machines, or how these two models or numbers differ in appearance.

A. The frame of the No. 4 Rem-Sho typewriter was decorated with beading and corrugations and recently has been enameled plain black. The
107 frame of the No. 6 Rem-Sho typewriter is made much lighter and plainer in design and the one I examined most recently was striped with gold on the black enamel finish.

Q. 33. The frame of the No. 4 Remington-Sholes typewriting machine was bronze, was it not? and the frame of the No. 6 Remington-Sholes machine is black, and in the instance where you have most recently examined it the frame was black and striped with gold, is that correct?

A. During the majority of this year the No. 4 machine has been made with bronze finish or with black enamel finish as designated by the order. Some of the No. 6 Rem-Sho machines which I have
108 seen were finished in plain black enamel, but the last one I saw had black enamel finish and was striped with gold.

Q. 34. Do you know whether any of these No. 6 Remington-Sholes machines have been sold or have been placed on trial with prospective purchasers?

A. I have seen several on trial, but I do not know of any that have been sold.

Cross-examination by Mr. Fisher:

Defendant's counsel, without waiving the objections to the questions and answers of the witness, makes the following cross-examination *de bene esse.*

xQ. 35. State, if you know, who has control of 109
the location and arrangement of numbers and names in the Chicago Telephone Directory?

A. I believe Mr. Buck, the contract agent of the Chicago Telephone Company.

xQ. 36. I call your attention to the Chicago Telephone Directory of the edition of June 1, 1900, and ask you if it is not a fact that the name "Wyckoff, Seamans & Benedict," and the address, "144 Madison" appears immediately opposite "Central 900," Remington Standard Typewriter?

A. It does.

xQ. 37. You have stated in your direct examination that you while acting as manager of the city sales office of the Remington-Sholes Co. rendered 110
bills for repair services performed in response to the telephone calls concerning which you have testified. Please state whether said bills were rendered upon the regular billheads of the Remington-Sholes Co.?

A. All such invoices were made on the regular billhead.

xQ. 38. I call you attention to defendant's exhibit sample Bartoleme & Stallwood rental bill, and ask you to state how this billhead compares with those used in rendering the bills referred to in your last answer?

A I believe it is the same form of billhead, at least it does not differ in any important point. 111

xQ. 39. Is it not the custom of all typewriter manufacturers to receive second-hand machines of other makes as part of the consideration when making sales of their own machines?

A. Old machines of other makes are taken in exchange as part payment by the majority of typewriter companies.

xQ. 40. Do you know what the practice of Wyckoff, Seamans & Benedict is in this regard?

A. I could not say that they take old machines of other makes in exchange of my own personal knowledge, as I have never sold Remington machines.

112 xQ. 41. What typewriting machines are sold by the United Typewriter & Supplies Co.?

A. We sell the New Century, Densmore, and Yost typewriters.

xQ. 42. What is the practice of the United Typewriter & Supplies Co. with respect to taking second-hand machines of other makes in part payment?

A. We take old machines of some makes other than own in exchange as part payment on new machines. We take most of the principal machines in part payment.

xQ. 43. Is it not the custom of many typewriter companies to display second-hand machines that have been taken in trade as part payment?

113 A. I know of only one or two companies who make such a display. I don't know of a company in Chicago that does. I have seen machines of other makes displayed by the Hammond Typewriter Co. at some of their offices, or agencies, and by the Oliver Typewriter Co. at some of their agencies.

xQ. 44. All the machines of other makes displayed by Remington-Sholes Co. while you were its local sales manager were second-hand machines, were they not?

A. They were—what is commonly known as second-hand.

xQ. 45. And they included other machines besides the Remington, did they not?

114 A. Yes, sir.

xQ. 46. What other makes of machines were thus exposed by you in the city sales office of the Remington-Sholes Co.?

A. There were probably eight or ten makes, including Remingtons, Smith-Premiers, Hammonds, Densmores, Olivers, Yost, Caligraph, etc.

xQ. 47. And these machines were offered for sale as second-hand machines, were they not?

A. Yes, sir.

xQ. 48. In making sales of such second-hand machines of other makes what was your practice while in charge of the office of the Remington-Sholes Co.

in regard to advising prospective purchasers as to 115
the makers of such second-hand machines?

A. We always sold a Rem-Sho if possible, and if not, sold a second-hand machine, usually explaining who its makers were and how long it had been used.

xQ. 49. And such was your practice when selling or disposing of a second-hand Remington machine, was it not?

A. It was.

xQ. 50. Is it not a fact that all makers of typewriting machines make a discount for cash or to large users, or by varying the allowance made for second-hand machines taken in part payment?

A. It is not the usual custom to give a cash discount, and second-hand machines taken in part 116
payment are always taken at their actual value.

xQ. 51. Do not manufacturers of other typewriting machines cut their prices in some instances and where the trade competition is close?

A. I can only speak from my own experience, and when I sell a machine I must turn in the full price for it.

xQ. 52. Do you not believe it to be a fact that some, if not most, typewriter manufacturers allow a discount to purchasers of large numbers of machines, say 25 and upward?

Counsel for complainant objects to the question as calling for the belief and 117
conclusion of the witness, and not for his knowledge or for facts, and as mere hearsay.

A. I believe a discount of some kind is usually allowed in such cases.

xQ. 53. What do you know to be the fact in this connection, with respect to the company by whom you are employed?

A. We give a small discount usually when machines are purchased in wholesale quantities.

xQ. 54. In case of close competition have you not, while in the employ of the United Typewriter &

118 Supplies Co. obtained permission to make a special and greater allowance for second-hand machines than the allowance ordinarily provided for such machines?

Counsel for complainant objects to the question as immaterial and irrelevant.

A. I have received permission to find a customer for the second-hand machine owned by the purchasing party, at whatever price he was willing to pay. When the machines were then sold to the outside customer there were no second-hand machines left for me to take in exchange.

xQ. 55. As a matter of fact, is that not one way of making a larger allowance?

119 Same objection as before.

A. It is only a matter of finding a customer for the second-hand machine as an accommodation to the party who wants to purchase a new machine.

xQ. 56. You know, do you not, that various makers of typewriting machines number their models or styles of machines, beginning with the numbers 1, 2, 3, etc., and numbering each new model with a higher number as such model is brought out?

A. That is the custom of some companies, including the Remington, Smith-Premier and Jewett.

xQ. 57. You know, do you not, that the typewriting machines of most of the standard makes
120 have black enamel frames, striped more or less with gold?

A. Most machines have black enamel frames, and I believe they are usually striped with gold.

xQ. 58. This is true, certainly, is it not, of the Densmore, the Smith-Premier, the Caligraph, the Yost and the Hammond?

A. It is true of most of the machines you mention, but the Densmore is not striped, the Hammond is not black, and the Caligraph is striped in gold and other colors.

J. FRANKLIN HOBBS.

Adjourned to Thursday, Dec. 6, 1900, at 9:30 o'clock A. M.

Thursday, December 6, 1900, 9:30 o'clock A. M., parties met pursuant to adjournment: Present, the same as before. 121

RICHARD C. DANIEL, of lawful age, a witness produced on behalf of complainant, after being first duly cautioned and sworn to testify the truth and the whole truth, did testify as follows:

Direct examination by Mr. McRoberts:

Q. 1. Please state your name, age, residence and occupation.

A. Richard C. Daniel; residence Chicago, Ill.; salesman for the National Cash Register Co.

Q. 2. Please state where and in what capacity you were employed during the year 1899. 122

A. I was manager for the Remington-Sholes Co. for the St. Louis office, for the sale of Remington-Sholes typewriting machines.

Q. 3. While you were manager of the St. Louis office of the Remington-Sholes Co. for the sale of Remington-Sholes typewriting machines, were calls received over the telephone of that office for companies or concerns other than the Remington-Sholes Co. itself, in any manner?

Counsel for defendant objects to the question and any answer that may be made thereto on the ground that the same is irrelevant, immaterial and incompetent; upon the further ground that the testimony called for is not proper rebuttal, no foundation for any such testimony having been laid in the testimony taken on behalf of defendants. And it is agreed between counsel that this same objection shall be understood as made to any and all questions and answers in the deposition of this witness to which the same is applicable. The counsel gives notice 123

124 that at the proper time he will move the Court that such questions and answers be suppressed.

A. No, sir; they were not received by any other than the Remington-Sholes Co. In some cases, however, parties would call and ask if that was the Remington Typewriter Co. I would invariably state that it was not—it was the Remington-Sholes Co.

Q. 4. What was the purpose or inquiry of these calls?

A. In some cases they wanted to see the representative about the purchase of a machine. In others they wanted a repair man.

125 Q. 5. And in response to these calls were repair men sent to repair the machines referred to by the callers?

A. Not without an explanation that we were not the Remington Typewriter Co.

Q. 6. But after this explanation was made the repair men of the Remington-Sholes were sent?

A. Yes, sir; in some cases.

Q. 7. And in those cases the Remington-Sholes repair men made the repairs, and bills were rendered and collections made for such work done?

A. Not by the Remington-Sholes Co., as we had arrangements with repair men of the Fletcher Typewriter Co. to do our repair work.

126 Q. 8. Please explain what your arrangement with the repair men was?

A. We were to pay so much per call for repairing the Remington-Sholes machines. But when they wanted other machines repaired that was turned over to Mr. Charles, representing the Fletcher Typewriter Co., for repairs, and he did such work and collected for same.

Q. 9. In the cases where the calls were made over the telephone at the Remington-Sholes office in St. Louis, and asking if that was the office of the Remington Typewriter Co., and stating that the caller wanted to see the representative about the purchase

of a machine, were representatives from your office sent in response to such calls? 127

A. I remember about one or two or may be three, of such instances, and I responded myself.

Q. 10. Were sales made of the Remington-Sholes typewriting machines in any of those instances?

A. I don't think there were; I can't recall one at at the present time.

Q. 11. Can you recall that sales were not made, or can you state positively one way or the other on this point, regardless of the name of the purchaser?

A. I can't say positively, but I don't think there were.

Cross-examination by Mr. Fisher, *de bene esse:* 128

xQ. 12. Please state how long you were the manager of the St. Louis office of the Remington-Sholes Co.

A. About one year.

xQ. 13. While you were in charge of the St. Louis office of the Remington-Sholes Co., did you have calls from persons wishing you to repair other machines than your own or the Remington?

A. In some cases we did.

RICHARD C. DANIEL.

WILLIAM C. GOODHUE, of lawful age, a witness produced on behalf of complainant, after being first duly cautioned and sworn to testify the truth and the whole truth, did testify as follows: 129

Direct examination by Mr. McRoberts:

Q. 1. Please state your name, age, residence and occupation?

A. William C. Goodhue, age 36, residence Chicago, Ill. An independent dealer in all makes of typewriters and typewriter supplies,

Q. 2. Where is your office located?

A. 122 La Salle street, Chicago, Ill.

130 Q. 3. Do you know and have you heard of a typewriting machine that is manufactured by the Remington-Sholes Co., of Chicago?

A. Yes, sir.

Q. 4. How are the typewriting machines that are manufactured by the Remingion-Sholes Co., of Chicago, generally designated and spoken of by the trade and by the public in general?

Counsel for defendant objects to the question and any answer that may be made thereto on the ground that the same is irrelevant, immaterial and incompetent; upon the further ground
131 that the testimony called for is not proper rebuttal, no foundation for any such testimony having been laid in the testimony taken on behalf of defendants, and upon the further ground that the testimony called for is secondary and not the best evidence. And it is agreed between counsel that this same objection shall be understood as made to any and all questions and answers in the deposition of this witness to which the same is applicable. The counsel gives notice that at the proper time he will move the court that such
132 questions and answers be suppressed.

A. They are designated and spoken of as the "Rem-Sho" which is understood to be an abbreviated term of Remington-Sholes.

Q. 5. Are these machines variously spoken of as the Remington-Sholes or Rem-Sho?

A. It is always understood when speaking of a Rem-Sho that you mean a Remington-Sholes.

Q. 6. Have you ever had inquiries made of you as to the relation between the Remington-Sholes Co. and the makers of the Remington typewriting machine or in any manner been asked as to the

origin of the Remington-Sholes typewriting ma- 133
chine with relation to the Remington machine?

A. Yes.

Q. 7. By whom have such inquiries been made?

A. I couldn't name any one by customers, by people that I have been talking with.

Q. 8. What has been the substance of these inquiries?

A. That is a hard question to answer. The talk along that line has been so indefinite that I could not give anything intelligible on that line. I can tell you this. I have had people in ordering machines or in making inquiry in regard to machines, designate the Remington Standard as being the machine they wanted, not the Remington- 134
Sholes.

Cross-examination by Mr. Fisher, *de bene esse*.

xQ. 9. How long have you been in the present business?

A. Five years.

xQ. 10. If I understand you correctly, the machine manufactured by the Remington-Sholes Co. is commonly designated and spoken of as the "Rem-Sho." Is that correct?

A. Yes, sir.

WM. C. GOODHUE.

Counsel for complainant offers in evidence a pa- 135
per writing purporting to be a copy of the certificate of dissolution of the Remington-Sholes Typewriter Company, dated March 8th, 1897, and sworn to by Charles N. Fay and Harry R. Cowan, as President and Secretary respectively of the said Company, and the same is marked "Wyckoff, Seamans & Benedict vs. Howe Scale Company of 1886, Complainant's Exhibit Certificate of Dissolution of Remington-Sholes Typewriter Company, Clara A. Blackwell, Notary Public;" counsel for defendant admits and states upon the record that the said Exhibit is a true and authentic copy of the original certificate of dissolution of said Remington-Sholes

136 Typewriter Company prepared and executed by said Charles N. Fay and Harry R. Cowan as President and Secretary respectively of said Company, and filed for record in the office of the Secretary of State of Illinois, March 15th, 1897, and for record in the office of the Recorder of Cook County, Illinois, March 9th, 1897, and recorded in Book 5962 at Page 418, Document Number 2,507,484 in said Recorder's Office, all as required by the laws of the State of Illinois in such case made and provided, and that said copy may be received as evidence in this case with the same force and effect as the original thereof would have.

137 But counsel for the defendant objects to the introduction of said exhibit as immaterial, irrelevant, incompetent and not proper rebuttal testimony, no foundation for any such testimony having been laid in the testimony on behalf of defendant, and gives notice on the record that before the hearing of this cause he will move that the same be stricken from the record.

138 Counsel for complainant offers in evidence a photograph of an envelope addressed to "Mr. Chas. Norman Fay, Mgr., Remington Typewriter Co., Chicago, Illinois," and the same is marked "Wyckoff, Seamans & Benedict v. Howe Scale Company of 1886, Complainant's Exhibit Caldwell, Ohio, Envelope, Clara A. Blackwell, Notary Public." Counsel for defendant admits that said photograph is a true and correct representation and reproduction of an envelope and of the writing and other marks upon the face of the same, that was delivered by a mail carrier in the regular course of mail at the office of Wyckoff, Seamans & Benedict at the City of Chicago, some time in January, 1900; that said envelope was returned to said mail carrier on the same day and was delivered by a mail carrier in the regular course of the mail to Mr. Charles Norman Fay, President of the Remington-Sholes Company, at the office of the Remington-Sholes Company, 127

Rees Street, Chicago, Illinois, and was received and 139
accepted by said Fay.

Counsel for complainant desires to state that this exhibit photograph was shown to counsel for defendant some time about the last of January or February of 1900, but that defendant's counsel at that time declined to make any stipulation in regard thereto, alleging as his excuse that it was "merely cumulative," and at the same time told counsel for complainant that he might save it and introduce it when taking his rebuttal testimony.

Counsel for defendant states that he has no recollection of having seen the photograph in question until about the time defendant's testimony was closed, when it was brought to his office; but, in view 140
of counsel's explanation, he will waive the objection to the introduction of the exhibit as being not properly in rebuttal, but objects to its introduction upon the ground that it is immaterial, irrelevant and incompetent, and gives notice that before the hearing of the cause he will move that the same be stricken from the record.

It is stipulated by counsel for the respective parties that for the purposes of this litigation it may be accepted as proved that Franklin Remington, of the Remington-Sholes Company, now owns one hundred and fifty (150) shares of the common stock of said company, of the par value of fifteen thousand dollars ($15,000.00); that at about the time of the organiza- 141
tion of said company the said common stock was divided among the stockholders in keeping with the amounts of cash actually invested by them in the Remington-Sholes Typewriter Company, and that the allotment of said common stock to said Franklin Remington was in keeping with such plan; that for his own use the said Franklin Remington has never held more than or other than said 150 shares although for purposes of organization of the Remington-Sholes Company he originally subscribed for five hundred (500) shares of said stock.

142 Adjourned subject to notice by counsel for complainant.

Counsel for complainant now offers in evidence a typewriting machine purporting to be a "Remington-Sholes No. 6," and the same is marked "Wyckoff, Seamans & Benedict vs. Howe Scale Co. of '86, Complainant's Exhibit Remington-Sholes No. 6."

Counsel for defendant admits, and so states upon the record, that said exhibit machine was made and sold by the Remington-Sholes Company of Chicago, Illinois, and that said company manufactures and sells, and its agents and branch offices sell and offer for sale, typewriting machines identical in design and appearance with said exhibit, and
143 that said machines of this style and design, so made by the Remington-Sholes Company, are designated by said Company as Rem-Sho No. 6.

Counsel for defendant objects to the introduction in evidence of the exhibit, upon the ground that it is immaterial and irrelevant and not proper rebuttal, no foundation for the introduction of such exhibit having been laid in defendant's testimony, and no opportunity having been afforded defendant to show why, for reason of economy, lightness, etc., the style of frame of the machine was changed, nor why, in view of the art and of the common practice of all manufacturers of typewriting machines, the adopted style of frame, its finish, coloring, etc.,
144 were entirely admissible, proper and lawful.

Counsel for complainant objects to all that part of the objection beginning with the words "and no opportunity," for the reasons that it is argumentative and that it states conclusions of alleged facts for which there is no basis whatever in the record; and further, that it states conclusions of law.

It is agreed between counsel that the stipulation heretofore entered into between counsel, and wherein is mentioned a circular or advertisement of the Office Inventory & Typewriter Company, Limited, and marked for identification "Wyckoff, Seamans & Benedict vs. Howe Scale Co., of 1886, Office Inven-

tory & Typewriter Co., Limited, Advertisement, 145
Lynden Evans, Notary Public;" and wherein is also mentioned a letter written to one Vilhelm Kondrup and marked for identification "Wyckoff, Seamans & Benedict vs. Howe Scale Co. of 1886; Newald-Kondrup Letter, Lynden Evans, Notary Public;" and wherein is mentioned a copy of the *Russian News* marked for identification "Wyckoff, Seamans & Benedict vs. Howe Scale Co., of 1886; Complainant's Ex. Remington-Sholes machine, Russian Advertisement, L. M. B. Sp. Exr. July 19, 1899," was subject to the objection by counsel on behalf of defendant that the aforesaid exhibits and the facts stated in said stipulation concerning them are immaterial and irrelevant, for the reasons *inter* 146
*alia*, that it has not and cannot be proven that the advertisements, statements, etc., therein referred to were made or published by authority or sanction of defendant or the Remington-Sholes Company or of any one authorized to act for either of them in such matters, and subject to the notice of defendant's counsel that at or before the hearing of the cause motion will be made to have such matters stricken from the record.

147

148 CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT,
Complainant,

*vs.*

HOWE SCALE CO. of 1886,
Defendant.

STATE OF ILLINOIS, }
149 County of Cook. } ss.:

I, CLARA A. BLACKWELL, Notary Public, in and for the said County of Cook and State of Illinois, duly commissioned and sworn and Special Examiner pursuant to stipulation and agreement of the respective parties to the above-entitled case, hereto annexed, do hereby certify that on the fourth day of December, A. D. 1900, named in the testimony, evidence and depositions hereto annexed, I was attended at Room 43, in building No. 107 Dearborn street, in the City of Chicago, Cook County, Illinois, by Messrs. H. D. Donnelly and Josiah McRoberts, counsel for complainant, and George P. Fisher,
150 Junior, counsel for defendant, and Bruce L. Holton, William A. Catlin, Silas W. Crandall, John S. Bayes, J. Franklyn Hobbs, Richard C. Daniel and William C. Goodhue, witnesses for complainant, as appears by the documents and proceedings hereto annexed; that the said witnesses, Bruce L. Holton, William A. Catlin, Silas W. Crandall, John S. Bayes, J. Franklyn Hobbs, Richard C. Daniel, and William C. Goodhue, and each of them, were duly cautioned and sworn to testify the whole truth and carefully examined, and their depositions were reduced to typewriting by Mina Aurland in their presence, and were read over by them and each of them, and by them signed in my presence and in

the presence of all of said counsel; that said Mina Aurland is a skillful typewriter operator, and by consent of counsel said depositions and testimony hereto annexed were typewritten by her at the time they were taken; that the following exhibits, to wit: 151

Complainant's Exhibit Kansas City *Star* Advertisement.

Complainant's Exhibit Crescent Produce Co. Letter.

Complainant's Exhibit Macomb Shorthand School Letter and Envelope.

Complainant's Mumaw Exhibits Numbers 1, 2, 3, 4, 5, 6 and 7.

Complainant's Exhibit Caldwell Ohio Envelope. 152

Complainant's Exhibit Certificate of Dissolution of Remington-Sholes Typewriter Company.

Complainant's Exhibit Remington-Sholes Number 6.

Were introduced in evidence and are identified by my name and seal attached thereto.

I further certify that I am not of counsel or attorney for either of the parties, nor interested in the event of the cause, nor am I related by blood or marriage to any of the officers of complainant, nor to the defendant in this suit or its officers or members.

I further certify that I have authenticated by my signature and notorial seal the said proceedings aforesaid. 153

In testimony whereof I hereunto set my hand and official seal this 6th day of December, A. D. 1900.

CLARA A. BLACKWELL,
Notary Public and Special Examiner by stipulation and consent.

[SEAL.]

154 M. C. VANCE, recalled by the complainant for further cross examination, after being duly sworn, testified as follows:

Cross-examination by Mr. Donnelly:

xQ. 1. Did you on the 14th of July, 1899, at the office of Wyckoff, Seamans & Benedict, in the City of Pittsburg, Pennsylvania, make a statement in the presence of Mr. Crean and his stenographer, Miss Stein, as regards the transaction between you and Mr. Scorer in reference to the purchase of a Remington-Sholes or Rem-Sho writing machine?

A. Yes.

xQ. 2. At that time and place, did you in the
155 presence of Mr. Crean and Miss Stein, make the following statement which was taken down by Miss Stein as a stenographer, to wit:

"Mr. Scorer called on me about that time and told me he was representing the Howe Scale Co. in Pittsburg, who were the selling agents for the Remington-Sholes machine. I said to Mr. Scorer I was thinking of getting a new typewriter, but I wanted to purchase a Remington machine, as I had had considerable experience with various makes of typewriters and my preference was for the Remington. In fact, I told him I did not want any but a Remington. Mr. Scorer told me the machine he
156 handled, the Remington-Sholes, was manufactured by the people who had manufactured the Remington machine; that it was made after the model of the Remington machine and that many of the patents on the Remington had expired, and that they were at liberty to make their machine in many respects as the Remington had been made. Mr. Scorer told me that at one time his people had been restrained by the courts from manufacturing the machine which he was offering for sale, but that had been since overruled, and his people were now at liberty to make the machine. My understanding from Mr. Scorer's conversation to the effect that

the name "Remington" was used in connection 157
with the name of the machine which he was handling, gave me to believe that his machine was a species of Remington machine, and feeling as I did that I wanted only a Remington machine, I thought I would not be getting away from my preference in taking the machine. With this understanding I agreed to, and did, purchase a Remington-Sholes machine. I never knew until very recently that I had been under a misapprehension. Had I known the facts at the time as I know them now, I do not believe I could have been induced to have taken the Remington-Sholes machine. It occurred to me at the time, and I thought that inasmuch as the people
who manufactured the Remington-Sholes formerly 158
manufactured the Remington, that that fact gave them the right to use the word "Remington" in connection with the name of their machine.

By Mr. Fisher:

Counsel for defendant objects to the question as improper, the proper manner of presenting the matter to the attention of the witness being to show the witness the statement itself and interrogate her in respect thereto.

I had a talk with Mr. Crean and he put those, the
previous questions on that sheet, to me, and I 159
answered those, I refer to the sheet from which this quotation was made, and I mean the questions previous to the one that has been quoted—and the rest of that statement he dictated to the stenographer himself after our talk, and there were parts of it I objected to at the time and he said it didn't matter, he just wanted to get a crude idea of what I could testify to, and their attorney would be in Pittsburg shortly or he would want me to go to New York and talk to me himself, but that statement was just simply to get an idea of about what I would say, and there were statements made when he

160 was dictating to the stenographer that I told at the time weren't correct.

Complainant's counsel objects to the answer to the question as improper, because not responsive to the question. He repeats the question and asks the witness to answer yes or no—whether she did make the statement quoted in the last preceding question.

Counsel for defendant protests against counsel's demand for a catagorical answer, as the witness is plainly entitled to protect herself by giving the circumstances under which the statement referred to was written.

161

Question repeated.

A. The statement at the latter part— I had a talk with him. We talked the matter over and he asked me questions and I answered him, and when we got through he dictated that statement himself to the typewriter. I hadn't anything to do with that, that is as far as dictating it to the stenographer was concerned. That isn't that language I used at all. It is his own language.

Same objection to the witness' answer as above.

162 xQ. 3. Will you now please answer yes or no as to whether you did make the statement in the presence of Mr. Crean and Miss Stein which was taken down by Miss Stein in your presence, and which was in substance and effect as quoted in my previous question.

A. I cannot say I made that statement to Mr. Crean. That is Mr. Crean's statement made up from what I said at that time. The stenographer took it down and he told her what to put down, and when he told he dictated things to her that I objected to at the time, such as saying that I wouldn't have been induced to buy the Remington-

Sholes if I hadn't thought it was a Remington ma- 163
chine. I didn't purchase the machine, I only allowed him to put it on trial and said if it wasn't satisfactory I insisted on getting a Remington. I wanted a second-hand Remington to start with.

xQ. 4. Otherwise than as you have just stated, is the statement which I have quoted in my preceding question correct or substantially correct, as you stated to Miss Stein and Mr. Crean.

A. I can't say that the statement is absolutely correct. There are parts of it that are not. That statement was made there at that time, and parts of it I objected to at that time.

xQ. 5. Was the statement at that time read over to you at that time by Miss Stein in the presence of 164
Mr. Crean?

A. I can't remember, but I believe it was; I am not sure.

Redirect examination by Mr. Fisher.

rdQ. 1. Were you subpœnaed to appear here as a witness on behalf of complainant this morning?

A. I believe it was; I was not subpœnaed.

rdQ. 2. After Mr. Crean had dictated that part of the statement that has been quoted in the foregoing part of your examination, what, if anything, did you say to him about the statement?

A. I don't remember exactly, but while the 165
stenographer was taking that down there were several things said that I said weren't correct. There were statements that he took out too that he dictated, and others he didn't.

rdQ. 3. What did he say to you when you told him that some of the statements were incorrect?

A. That it didn't matter much in that statement, that they had just wanted to send their attorney just a crude idea, I think the word "crude" was the one he used, of what testimony I would give when they subpœnaed me.

rdQ. 4. Did you ever sign that statement?

166 A. I don't remember whether I signed it or not. I may have, but I don't remember. It wasn't a sworn statement, and if I did, I signed it with the objections I made to him, and he knew I made those objections.

rdQ. 5. At any time after the making of this statement, were you requested to appear as a witness in this case?

Complainant's counsel objects to the question upon the ground that the question is a repetition of questions which have already been asked the witness in her previous examination.

167 A. Yes, sir.

rdQ. 6. Did you appear at any place for that purpose?

Same objection as last.

A. I was down at Hotel Lincoln while they were taking depositions. I wasn't in the room where they were taking depositions, but I was in the room adjoining.

rdQ. 7. When was that? How long after this?

A. I don't remember that either, but it wasn't very long, probably a month or so. It was during the summer, and it may have been one month, two months or three months, I don't remember.

168 rdQ. 8. Whom did you see and talk with at the Hotel Lincoln in regard to this matter at the time you attended there and at the time the depositions were being taken?

Same objection as last.

A. Mr. Scorer and Mr. Baer, I think, manager of the Densmore typewriter, and Mr. Crean and Mr. Bell, but when I talked to Mr. Bell, there wasn't any person in the room but Mr. Vance, Mr. Bell and myself. When I said Mr. Bell above, I meant Mr. Donnelly who is here present, counsel for complainant.

Mrs. H. B. FERGUSON, a witness called on behalf 169
of complainant, after being duly sworn, testified as follows:

Direct Examination by Mr. Donnelly.

Q. 1. State your name, residence and occupation, and whether you are of lawful age.

A. My name is Mrs. H. B. Ferguson. I live at 75 Chatham Street, Pittsburg; I am married and keeping house, and am of lawful age, twenty-five.

Q. 2. Were you ever in the employ of Wyckoff, Seamans & Benedict, in the City of Pittsburg?

A. I was.

Q. 3. During what period?

A. From March 1st, 1898, to September 1st, 1898. 170
I desire to correct this statement and say that I was married in October, 1899, consequently my previous statement is just a year out of the way. It was 1899 instead of 1898.

Q. 4. Do you remember or do you know a lady by the name of Mrs. Mary C. Vance?

A. I do.

Q. 5. About how long have you known Mrs. Vance?

A. About four and a half years.

Q. 6. What was your occupation or what were your duties at the time you were in the service of Wyckoff, Seamans & Benedict as previously stated?

A. Stenographer; had charge of the employment department and invoice clerk. 171

Q. 7. Do you remember the fact that while you were in the employ of Wyckoff, Seamans & Benedict, Mrs. Mary C. Vance called at the office of Wyckoff, Seamans & Benedict and there had an interview with Mr. Crean, at which you were present?

A. I do.

Q. 8. What was Mr. Crean's position in the office of Wyckoff, Seamans & Benedict at that time?

A. He was manager for the office located at Pittsburg.

Q. 9. Were you present at this interview between Mr. Crean and Mrs. Vance?

172 A. I was.

Q. 10. Did you take any part in regard to this interview and if so, what did you do?

A. I took the testimony verbatim and made a typewritten transcript of it.

Q. 11. Whose testimony or statement did you take at that time?

A. Mrs. Vance's.

Q. 12. Do you know what the statement which Mrs. Vance made at that time to Mr. Crean related to? I mean the subject matter of it?

A. I have a very general idea. It related to the matter of the Rem-Sho machine being sold on the representation that it was a Remington, and how
173 Mrs. Vance was led into purchasing a Rem-Sho machine under said misrepresentations.

Q. 13. Did you take down the statement which Mrs. Vance then and there made as regards the so-called Rem-Sho machine which she obtained?

A. I did.

Q. 14. How did you take it down, on the typewriter or stenographically?

A. Stenographically.

Q. 15. After you took it down stenographically, did you make a copy of the statement of Mrs. Vance?

A. I did.

Q. 16. Did you take down the statement steno-
174 graphically correctly and as she gave it at that time?

A. I took it down verbatim.

Q. 17. Did you at that time make a correct copy of it?

A. I did.

Q. 18. I show you a paper writing purporting to be a typewritten copy of a statement and ask you to examine the same and to say whether or not the paper which I now show you is the copy which you made from your stenographic notes of the statement of Mrs. Vance concerning the Rem-Sho machine which she obtained?

A. It certainly is. 175

Q. 19. Will you state when you took down this statement and transcribed it.?

A. The date is given on here, so of course that would answer the question. July 14th, 1899.

Q. 20. Is that the correct date and the date when the statement was stenographically made and copied?

A. It surely must be. I transcribed it immediately and dated it the day that the testimony was taken.

Q. 21. After that statement was taken down, was it read over to Mrs. Vance?

A. It was.

Q. 22. What did she say as to its being correct? 176

A. She stated that it was all right.

Council for complainant now offers in evidence the statement which has been identified by the witness, and the same is marked Complainant's Exhibit, Mrs. Vance's Statement, July 14, 1899.

Defendant's Counsel objects to the introduction of the exhibit as immaterial, irrelevant and incompetent.

Q. 23. Is your recollection now so distinct that you can from memory alone, unaided by the statement, give the exact contents thereof?

A. Of course I cannot attempt to give it verbatim. 177
I have only a recollection of the general subject matter involved, namely, Mrs. Vance's buying a Rem-Sholes machine on the representation that it was a Remington.

Q. 24. At the time that this statement was taken down by you did you then know what she said and did you take her statement correctly at that time?

A. I certainly took it down verbatim, and naturally would have to understand what was said in order to take it down any way intelligently, not alone verbatim.

178 Q. 26. Well, you took it down correctly as she said it, did you not?

A. Yes sir.

Cross-Examination by Mr. Fisher:

xQ. 1 What were your duties at the office of Wyckoff, Seamans and Benedict about the month July, 1899?

A. Stenographer, charge of employment department and bill clerk.

xQ. 2 Were you in the habit at that time of taking dictation from Mr. Crean and others?

A. Yes sir.

xQ. 3 How much of your time was devoted to
179 such work.

A. About two hours a day; I might add that I had such familiarity of the business that it did not require more than two hours dictation, although I was working on correspondence the greater part of the day.

xQ. 4 Is the Mr. Crean, to whom you have referred, the party who has been present in this room during the taking of your deposition?

A. He is.

xQ. 5. Have you recently talked with Mr. Crean in regard to this matter?

A. Just this morning. He sent for me to come to the office and when I arrived he told me for what
180 purpose I was desired.

xQ. 5. What did he tell you?

A. He told me that my testimony was desired regarding the conversation referred to as having taken place, and asked whether I could identify the transcript he showed me as being the one I made at the time the conversation took place.

xQ. 7. What else did he say to you.

A. I guess that is about all.

xQ. 8. Is the transcript referred to in your answer preceding the last one the statement that has been introduced in evidence during the course of your deposition?

A. Yes, sir ; it is. 181

xQ. 9. Did Mr. Crean ask you if you remembered whether Mrs. Vance had said that she had bought a Rem-Sho typewriter under the misapprehension that it was a Remington, or did he say anything to you in this connection ?

A. No, sir. We did not discuss the contents of the transcript.

xQ. 10 Did you read the entire transcript this morning when Mr. Crean showed it to you, I mean every line of it ?

A. No, sir. Not when he showed it to me.

xQ. 11. Have you read every line of this statement that has been offered in evidence as Complainant's Exhibit, Mrs. Vance's statement this morning. 182

A. I have very hurriedly, just prior to my coming in here, outside in the hall here.

xQ. 12. You are sure that you read it all, are you, hurriedly ?

A. Very sure. Hurriedly. I didn't read it leisurely.

xQ. 13. In whose possession has this statement been since it was written by you ?

A. I have no absolute means of knowing.

xQ. 14. To whom did you give it after you wrote it ?

A. I gave it to Mr. Crean, in the presence of Mrs. Vance, on the date of the document.

xQ. 15. How many copies of this statement did 183 you make ?

A. I think I made two, but I am not certain.

xQ. 16. I notice that the second page of the statement has the bottom portion torn off. State if the statement was in that condition when you delivered it to Mr. Crean ?

A. I cannot now recollect.

xQ. 17. After you delivered this statement to Mr. Crean, when did you next see it ?

A. I don't think I saw it between that time and this morning.

184 xQ. 18. Without referring to the statement, could you state what it contains?

A. Only generally, that is, that Mrs. Vance was induced to purchase a Rem-Sho machine on the representation that it was a Remington.

xQ. 19. But aside from this general idea of the contents of the statement, you have no recollection of the specific statements made therein?

A. No, sir; I have not.

xQ. 20. During the time that this statement was dictated to you, who was present beside Mr. Crean and Mrs. Vance?

A. I think Mr. Donnelly was, but I am not certain about that.

185 xQ. 21. Did Mr. Crean read over the statement to Mrs. Vance after it was written out, I mean did you hear him read it over to her?

A. Yes, sir; I did.

xQ. 22. Did Mrs. Vance sign the statement that Mr. Crean read over to her?

A. No, sir; at least, not in my presence.

xQ. 23. Did you see Mrs. Vance read over the statement herself? Or did Mr. Crean simply read it over to her?

A. Mr. Crean simply read it over to her.

xQ. 24. Did you make more than one transcript of any statement, or did you write out more than one transcript of any statement made concerning
186 this matter of Mrs. Vance?

A. No, sir; only one transcript.

xQ. 25. Did Mr. Crean request Mrs. Vance to sign that statement?

A. No, sir; not that I know of.

xQ. 26. State if you know what Mr. Crean said to Mrs. Vance at that time as to the purpose of the statement?

A. I do not recollect what he said to her as to the purpose, whether that was discussed in my presence or not, I simply don't recollect.

xQ. 27. Did you remain with Mrs. Vance and Mr. Crean after the statement was written out and after you had delivered it to Mr. Crean?

A. I did. I heard the transcript read to Mrs. 187
Vance and her assent to it.

xQ. 28. Can you state all that Mrs. Vance said during the reading of the transcript?

A. I do not recollect that she said anything, she was listening and doing no talking.

xQ. 29. Do you recall what she said after the transcript was read to her, I mean do you recall everything she said?

A. She said that it was all right, and I have no recollection of her saying anything after that.

xQ. 30. Then your recollection is that after the transcript was read to her she said it was all right and then got up and left, did she?

A. I can't say definitely whether she got up and 188
left immediately or whether she lingered; I know that I left the desk immediately after she assented to the transcript.

xQ. 31. But do you not recall how long she remained with Mr. Crean after you left?

A. No; I do not.

xQ. 32. During the dictation of this statement, did Mr. Crean say anything to you at all; and did you take down in the course of the dictation anything that he said?

A. My recollection now is that only a word or so to help Mrs. Vance out, that is to express briefly and concisely, but not that he said very much con- 189
cerning it. My dictation was taken from Mrs. Vance.

xQ. 33. But if I understand you correctly, Mr. Crean from time to time in the course of the dictation made some suggestions as to the language, is that correct?

A. Yes, sir.

xQ. 34. And you embodied such suggestions or corrections in the statement.

xQ. 35. You do not recall, of course, just what part of the statement was in the language of Mr. Crean, and just what part was in the language of Mrs. Vance, I suppose?

190 A. No; I cannot recall just which were Mr. Crean's words.

xQ. 36. And I suppose at this late date you could not recall or point out exactly which was Mr. Crean's language and which was Mrs. Vance's language, even with the statement before you, is that correct?

A. No, I cannot; I only remember that the dictation was taken from Mrs. Vance and that Mr. Crean threw in an occasional word about the wording; that's all.

xQ. 37. Mrs. Vance has testified that during the dictation of the statement to which you have referred, she objected to parts thereof upon the ground
191 that it was incorrect. Do you recall any such objections having been made, or do you recall Mrs. Vance's having made suggestions as to corrections?

A. I do not. I might add that the matter was talked over informally between Mrs. Vance and Mr. Crean prior to the testimony, and of which I did not take any notes, and that the subject matter was understood prior to the dictation, so that the dictation went along smoothly with the exception of the occasional word mentioned before, that Mr. Crean threw in concerning the wording—language.

xQ. 38. Was this statement, or any one similar to it, ever re-written by you?

A. No, sir; it was not.

192 xQ. 39. Do you recall any part of the conversation between Mrs. Vance and Mr. Crean that preceded the dictation of the statement concerning which you have testified?

A. No, not particularly. While I was there, I did not listen attentively as I was not required to take the testimony and did not bother my head much about it.

xQ. 40. You have repeatedly, in the course of your deposition, referred to the taking of testimony. Please state why you use the expression in connection with the statement concerning which you have testified.

A. I could give no reason. The word testimony 193
came to me simply because that was question and answer.

xQ. 41. Had you ever taken testimony before?

A. Yes, sir.

xQ. 42. How long before that had you taken dictation in the form of question and answer?

A. About a year or more.

xQ. 43. Please state the subject matter of the questions and answers that you took from dictation.

A. That is hard telling; when you do a variety of work for different people it is hard to retain the subject matter of what you take, particularly when the subject matter is of no vital interest to yourself personally. 194

xQ. 44. Do you remember hearing Mr. Crean tell Mrs. Vance that the statement was meant to be merely a crude statement of the facts to be sent to the attorney in New York?

A. No, sir; I do not.

xQ. 45. Do you recall anything in this connection?

A. No, sir.

xQ. 46. Did you hear Mr. Crean tell Mrs. Vance that she would be needed as a witness later on, or words to that effect?

A. No, sir; I did not.

xQ. 47. Do you recall any part of the conversation between Mrs. Vance and Mr. Crean, except the statement which you say Mrs. Vance made to the 195
effect that the dictated statement transcribed by you was all right?

A. No, sir; I do not.

xQ. 48. How long were Mrs. Vance and Mr. Crean in conversation before the dictation of the statement began?

A. Oh, I should say about ten minutes or thereabouts.

xQ. 49. And you were present during such time, were you?

A. Yes, sir.

xQ. 50. And the conversation all related to the same subject, I suppose?

196 A. So far as I can recollect.

xQ. 51. How are you able to fix the date when you wrote out this statement?

A. The date is given in the statement, and I know it would have to be some time between March and October, 1899.

xQ. 52. But you have no way of fixing the date other than the fact that the date appears on the statement, is that correct?

A. Yes, sir; no other way.

xQ. 53. How long had you known Mrs. Vance before this 14th day of July, 1899?

A. Well, between six months and a year or thereabouts.

197 xQ. 54. Had you ever seen her at the Pittsburg office of Wyckoff, Seamans & Benedict before?

A. I do not recollect whether I had seen her at the office of Wyckoff, Seamans & Benedict prior to the day mentioned, but I had seen her countless number of times at the office of their predecessors, A. M. Martin, through whom my acquaintance with Mrs. Vance extended.

xQ. 55. Who was A. M. Martin?

A. Mr. Martin was the general dealer for the Remington typewriter at Pittsburg, that is to say, for the territory that is under the Pittsburg direction.

xQ. 56. And where was Mr. Martin's office at that time for the sale of the Remington typewriter?

198 A. The same quarter as his successors, 412 Wood Street, Pittsburg.

xQ. 57. When was Mr. Martin succeeded by Mr. Crean in the management of the selling of the Remington typewriter?

A. In March, 1899.

xQ. 58. And, if I understand you correctly, you had seen Mrs. Vance many times at the office of Mr. Martin, where the Remington typewriter was sold prior to March, 1899?

A. Yes, sir; saw her, talked to her and knew her personally.

xQ. 59. Had you ever seen her talking with Mr. 199
Martin at the Remington typewriter office?

A. Sure; any number of times.

xQ. 60. Do you know what Mrs. Vance's business was that brought her to the office of the Remington typewriter while it was in charge of Mr. Martin?

A. Yes, sir; I do.

xQ. 61. What was it?

A. Public stenographer and typewritist. I mean one that had an office and took in outside work; worked for the public generally.

xQ. 62. Did Mrs. Vance ever work at the office where the Remington typewriter was sold prior to March 1899?

A. No, sir; she did not. 200

xQ. 63. Then, for what purpose did she call at the office?

A. She was renting a Remington typewriter of Mr. A. M. Martin, and later called in regard to negotiating for the purchase of a Remington machine.

Re-direct examination by Mr. Donnelly:

Re-D. Q. 1. Do you know where your original note-book is in which you took the stenographic notes from which you made the transcript which you have indentified and which has been put in evidence in this case?

A. No; I do not. 201

Re-D. Q. 2. Where was it the last time you saw it, so far as you now remember?

A. In my desk at the office somewhere.

Re-D. Q. 3. Whose office do you refer to?

A. At the office of Wyckoff, Seamans & Benedict.

Re-D. Q. 4. Have you endeavored to find your original note-book?

A. I personally have not, for I wouldn't know where to begin to look for it.

Re-D. Q. 5. You left it at the office of Wyckoff, Seamans, & Benedict with your other note-books at time you left the office?

A. Yes, sir.

202 Re-D. Q. 6. What was the habit, so far as you know, of Wyckoff, Seamans & Benedict, or your own habit, as to preserving stenographic note-books?

A. It was always my habit to date the note books, giving the date when it was first used and the last date, and put it away in a lower drawer in the desk which I used.

Re-D. Q. 7. Was that note-book in the drawer of your desk when you left?

A. I have every reason to suppose it was, although I did not make a personal examination of the books before I left.

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**Complainant's Exh. Mrs. Vance statement, July 14th, 1899.**

Mrs. Mary C. Vance, July 14, 1899.

Q. What is your occupation, Mrs. Vance?

A. Stenographer and typewriter.

Q. For how long have you been a typewritist, or familiar with typewriting machines?

A. For 11 years, during 8 years of which time I have been by profession a stenographer and operator.

Q. When did the transaction come up in which Mr. Scorer had to do with?

204 A. In January, 1898.

Q. Were you in the market for a writing machine along about January, 1398, and did you have some conversation with the representative of the Howe Scale Co. in relation to the purchase of a Remington-Sholes machine?

A. Yes.

Q. Please state briefly what occurred?

A. A Mr. Scorer called on me about that time and told me he was representing the Howe Scale Co. in Pittsburg, who were the selling agents for the Remington-Sholes machine. I said to Mr. Scorer I was thinking of getting a new typewriter, but I wanted

to purchase a Remington machine as I had had con- 205
siderable experience with various makes of type-
writers and my preference was for the Remington.
In fact, I told him I did not want any but a Rem-
ington. Mr. Scorer told me the machine he handled,
—the Remington-Sholes—was manufactured by the
people who had manufactured the Remington ma-
chine; that it was made after the model of the Rem-
ington machine and that many of the patents on
the Remington had expired, and they were at
liberty to make their machine in many respects as
the Remington had been made. Mr. Scorer told me
that at one time his people had been restrained by
the courts from manufacturing the machine which
he was offering for sale, but that had been since 206
overruled, and his people were now at liberty to
make the machine. My understanding from Mr.
Scorer's conversation to the effect that the name
"Remington" was used in connection with the name
of the machine which he was handling, gave me to
believe that his machine was a species of Remington
machine, and feeling as I did that I wanted only a
Remington machine I thought I would not be get-
ting away from my preference in taking the ma-
chine. With this understanding I agreed to, and did,
purchase a Remington-Sholes machine. I never
knew until very recently that I had been under a
misapprehension. Had I known the facts at the
time as I know them now, I do not believe I could 207
have been induced to have taken the Remington-
Sholes machine. It occurred to me at the time, and
I thought that inasmuch as the people who manufac-
tured the Remington-Sholes formerly manufactured
the Remington, that that fact gave them the right
to use the word "Remington" in connection with
the name of their machine.

208 THOMAS F. CREAN re-called on behalf of complainant testified as follows:

Direct-Examination by Mr. Donnelly.

Q. 1. Are you the same Thomas F. Crean who has already been called in this case on behalf of complainant?

A. Yes, sir.

Q. 2. I call your attention to Complainant's Exhibit, Howe Scale Co.'s Invoice for machine No. 3309 of September 16, 1898, and ask you to examine the same and to say whether or no said invoice is new in the same condition that it was when you received it, and if not, wherein, if at all, it differs from its
209 condition when you received it, as you have already testified, from Mr. Wilgus?

A. The invoice is the identical invoice received by me as heretofore testified to, and it is in exactly the same condition as it was when I received it, with the exception of the penciling near the upper left hand corner "Less 2½ cash $1.56," and immediately below in ink the words "Rec'd Sept., 16/98, T. F. C." These two memoranda are in my handwriting, but everything else on the bill was on it when it came into my hands.

Q. 3. I call your attention particularly to the name "Remington" as it appears in said invoice, and particularly to the quotation marks about said
210 name, and ask you whether or no those quotation marks were on the invoice and about said name when you received it?

A. At the time I received this invoice, I did not notice particularly the quotation marks referred to, but several days, perhaps a week thereafter, when I was delivering this bill to Mr. Donnelly, I did notice then, and I believe for the first time, that the word "Remington" was quoted, and I believe at that time called Mr. Donnelly's attention to this fact.

Q. 4. Did you place the quotation marks before and after the name Remington at any time after you received the invoice from Wilgus and before you delivered the same to Mr. Donnelly?

A. Positively no. 211

Q. 5. When did you enter the service of Wyckoff, Seamans and Benedict and take charge of their office in the City of Pittsburg.

A. I took charge of the Pittsburg office on the 1st day of March 1899, and at that time I had been in the employ of that corporation for in the neighborhood of fifteen months.

Q. 6. After you entered the employ of Wyckoff, Seamans & Benedict and took charge of their Pittsburg office, did or did you not become acquainted with a lady by the name of Mrs. Mary C. Vance?

A. Yes, sir.

Q. 7. After you became acquainted with her did you have any interview with her at the office of 212
Wyckoff, Seamans & Benedict in Pittsburg in relation to a Rem-Sho or Remington-Sholes writing machine which she had obtained or taken on trial?

A. Yes, sir.

Q. 8. Do you now recall the date of the interview which you had with her in relation to the said Rem-Sho typewriter?

A. Yes, sir; I had such an interview on the 14th day of July, 1899

Q. 9. Who was present at that interview?

A. My stenographer, Miss Stein, who is now Mrs. Ferguson.

Q. 10. Please state what occurred at that interview? 213

A. Mrs. Vance called at the store of Messrs. Wyckoff, Seamans & Benedict at No. 412 Wood street, Pittsburg, at my request. I had a conversation with her and told her that I understood she had purchased a Remington-Sholes typewriter about a year previously, and that when she purchased such machine she was given to understand that it was a species of Remington machine, and that my object in asking her to call was to ascertain what the true facts were in relation to her understanding of the matter. We talked the matter over for perhaps five minutes, and when she had given me her views

214 I told her I would like to have her repeat in substance to our stenographer what she had said to me, which she appeared to be very glad to do and which she did do. I called Miss Stein who was sitting at an adjoining desk and asked Mrs. Vance a few questions and her answers to my questions were taken down in shorthand by Miss Stein. After she had finished her statement she waited until Miss Stein transcribed the notes and I then read to Mrs. Vance the typewritten copy which Miss Stein handed me and after hearing the same read, Mrs. Vance indicated her approval of the contents of the memorandum, which concluded the interview.

Q. 11. After the statement was written out by your
215 stenographer, Miss Stein, and it was read over to Mrs. Vance, did she at that time claim or state that there was anything in the statement which was wrong or incorrect or not in accordance with her knowledge or recollection of the transaction that took place between her and Mr. Scorer?

A She positively did not, but on the contrary indicated her entire approval of the statement from beginning to end, not only at that time but subsequently.

Q. 12. I now show you the transcript purporting to be Mrs. Vance's statement and which has been marked in this case Complainant's Exhibit Mrs. Vance's Statement, and ask you to examine the
216 same and say whether or no that is the transcript which was made on the 14th of July, 1899, by Miss Stein, your Stenographer and which you say you read over to Mrs. Vance at that time and she approved.

A. The statement handed me is the identical statement which was transcribed by Miss Stein at the time and which I read over to Mrs. Vance in Miss Stein's presence.

Q. 13. Has it been changed or altered in any way since it was delivered to you by your stenographer in so far as the typewritten matter is concerned?

A. No, sir; from my recollection of the contents

of the statement and after a careful examination of 217
the same, I cannot detect any change whatever.

Q. 14. What, if anything, did you do with Complainant's Exhibit, Mrs. Vance's Statement, after it was read over to her on the 14th day of July, 1899, as you have stated?

A. My recollection is that I placed it in one of the pigeon-hole recepticles in my desk and kept it there for some time and that thereafter I mailed it to Mr. Donnelly in New York for his perusal. Some time later I received it back from Mr. Donnelly, and from that time until now it has been in my possession.

Q. 15. In the position which you now hold with Wyckoff, Seamans & Benedict, and which you have held since you first entered their service, have you 218
acquainted yourself with the business which you have charge of and particularly with the sale of their writing machines?

A. I have constantly tried to inform myself in relation to these matters.

Q. 16. And in the position which you have held, have you had supervision of the sales of their machines in Pittsburg and other offices of theirs which you have had charge of?

A. Yes, sir; I have been in supervision of their business not only in Pittsburg but in Buffalo, in Rochester, in Hartford and in addition have had occasion to visit about among their offices in various other cities such as Washington, Baltimore, Boston, 219
New York, Montreal, Toronto, Ottowa and various other cities.

Q. 17. Speaking from your own observation and experience, who are the classes of persons that purchase writing machines?

Counsel for defendant objects to the question and any answer that may be made thereto on the ground that the same is irrelevant, immaterial and incompetent, and upon the further ground that the testimony called for is not proper rebuttal, no foundation for such testi-

220 mony having been laid in that taken on behalf of defendant.

A. As a rule writing machines are purchased by the heads of firms or corporations, in the case of the latter usually through purchasing agents.

Q. 18. Are they purchased by professional men also?

Same objection, and it is agreed between counsel that without repetition, the objection shall be understood as made to all questions and answers of this deposition to which it may be applicable.

A. Yes; very largely.

221 Q. 19. Speaking from your own observation and experience in managing the sales of typewriting machines, state what percentage of the purchasers and owners of typewriting machines are practical operators thereon or are familiar with the structure, mode of operation of the machine, or machines which they purchase or use?

A. I believe I would be speaking very conservatively when I would put it that not one time in ten does the individual who actually purchases a typewriter use it himself.

Q. 20. What attention, if any, to the construction or mode of operation of a typewriter do these classes of purchasers whom you have named give to the 222 machine they purchase; or upon what, if anything, do they rely as regards the genuiness of the machine they purchase or seek to purchase?

A. It is an exceedingly unusual thing for the purchaser of a typewriter to inquire to any great extent into its mechanical construction. They are often guided very largely by a preference which they have for certain makes of writing machines, and I should say that the name of the machine and the reputation which that name carries with it, is what influences most purchasers toward a particular machine.

Q. 21. Speaking from your own observation and

experience in the management of the sales of the 223
Remington typewriter, what importance do you attach to the name "Remington" as it is associated with the machines which you sell, and to what extent, if any, is that name a factor in inducing the prospective purchaser in buying such machine?

A. As a result of my personal observation, it is my opinion that the name "Remington," attached to our machine, is the most important factor in connection with the sale of our goods. I mean by this, of course, the name Remington and the reputation which is connected to that name when connected with a writing machine. The mere fact that our machine is a Remington, makes it unnecessary in many cases to say anything further so far as the 224
merit of our production is concerned.

Q. 23. Has the so-called Rem-Sho or Remington-Sholes machine been on the market here during any portion of the time that you have been in the service of Wyckoff, Seamans & Benedict?

A. Yes, sir; constantly up to within a few weeks, when I was advised that it had been withdrawn. This latter information was only given to me indirectly, so I do not intend to vouch for its correctness.

Q. 24. Speaking from your own knowledge and observation, what is the name Rem-Sho understood to be in the typewriter trade; that is to say, what does it stand for in the trade? 225

Counsel for defendant objects to the question and any answer that may be made thereto, for the reasons heretofore given, and for the further reason that the testimony called for is secondary and not the best evidence; and it is agreed that this same objection shall be understood as made to any and all questions and answers in this deposition to which the same will be applicable; and counsel gives notice that at the proper time he will move the court that such questions and answers be suppressed.

226 A. I believe everyone connected with the typewriter business understands the term Rem-Sho is simply an abbreviation for the word Remington-Sholes.

Q. 25. If you know, please state what model, that is to say, what number of the Remington typewriter is most generally sold and used in this country at the present time?

A. The model known as No. 6.

Cross Examination by Mr. Fisher.

Without waiving his objections to the questions and answers of the witness, defendant's counsel makes the following examination *de bene esse*:

227 xQ. 27. Did Mr. Wilgus write anything on complainant's Exhibit, How Scale Co. Invoice for machine 3309 of Sept. 16, 1898, after he brought the invoice to you?

A. Not in my presence; no, sir.

xQ. 28. In whose possession was the invoice from the time you received it from Mr. Wilgus until you delivered it to Mr. Donnelly.

A. In my possession if I remember correctly.

xQ. 29. Are you positive about this, that it was in your possession all the time?

A. When I say "my possession," I didn't mean in my pocket, but in my desk at No. 327 Broadway.

228 New York City. That is my recollection of it. It is a long time ago to remember every little detail in connection with it.

xQ. 29. Did any one have access to your desk at No. 327 Broadway, New York, during the time the invoice was there?

A. No, sir.

xQ. 31. The desk was locked, was it?

A. Yes, sir; it was a roll top desk and it was locked and I believe I was the only one that had a key for it.

xQ. 32. Did you show the invoice to any one prior to the time that it passed from your possession into that of Mr. Donnelly?

A. No, sir; I cannot recall that I did. 229

xQ. 33. Were you ever in the employ of the Howe Scale Co.?

A. Not the Howe Scale Co., Page, Dennis & Co., who were the representatives in New York City of the Howe Scale Co.

xQ. 34. At the time that complainant's Exhibit, Mrs. Vance's Statement, was dictated to Miss Stein, did you understand from your conversation with Mrs. Vance prior to the dictation of said statement, that she had been a user of the Remington typewriter for a number of years?

A. That was my understanding from her statements to me.

xQ. 35. And it was your understanding at that 230
time that Mrs. Vance had purchased the Rem-Sho typewriter believing that it was the same as the Remington typewriter that she had been using or that it was made by the same people who manufactured the Remington typewriter with whose Pittsburg office she was familiar?

A. The impression which our conversation made upon my mind was that she understood it to be a Remington machine. She gave me to understand that she believed from what Mr. Scorer had told her about the Remington-Sholes machine that it was the invention of the same people who had invented the Remington with which she had been so long familiar, and that it was manufactured by the peo- 231
ple who had formerly manufactured the Remington which she had been using.

xQ. 36. But you did not understand from her that she supposed the Rem-Sho was the same make of machine as she had been using, or was manufactured by the parties who were at that time making the familiar Remington machines, is that correct?

A. Not so far as the make of the machine is concerned, but not that it was manufactured by the same people who were at that time making the Remington, but that it was a Remington machine,

inasmuch as it had been invented and put on the market by the same people who invented and put the other Remington on the market. This was my understanding of her conversation.

xQ. 37. Did you tell Mrs. Vance what the purpose was in having this statement prepared?

A. If I recall correctly, I told her that suit was pending in relation to the use of the word "Remington" and that I understood that she was one of others who in this section had been induced to buy a Remington-Sholes machine largely from the fact that the word "Remington" was a part of its name, and after our conversation on the subject, I expressed a desire to have it put in the shape of a written statement what she had said to me, telling her we might or might not at some future time call on her.

xQ. 38. Did you request her to sign the paper?

A. No, sir.

xQ. 39. Was this explanation as to the purpose of the statement given to Mrs. Vance in the presence of Miss Stein?

A. During the whole conversation Miss Stein occupied a desk just beside my own. She was attending to her own duties during the preliminary conversation and took no actual part in the interview until I called on her to do so. She might or might not have heard what we talked about previously.

xQ. 40. Do you recall what suggestions or corrections, if any, Mr. Vance made with respect to the matters contained in that statement?

A. I do not recall that she made any suggestions. I am positive she made no corrections, because when the statement was transcribed I read it to her and she expressed her approval of it.

xQ. 41. I notice the bottom of the second page of that statement has been torn off. Was this second page in that condition at the time the statement was written by Miss Stein?

A. I cannot say positively as to that. I do know

that the statement as it appears at present contains 235
everything that was on it at the time it was read to Mrs. Vance.

xQ. 42. But you do not recollect whether the second page of the statement was whole or torn at the time the statement was written? Is that correct?

A. Yes, sir.

xQ. 43. How long did you retain that statement in your possession after it was written by Miss Stein?

A. I have no means of determing as to this. Very likely several weeks. If I recall correctly, I held it expecting Mr. Donnelly would be in Pittsburg shortly, or that I might be in New York, so that I could hand it to him personally and ask him 236
whether there was anything further he cared to have me talk with Mrs. Vance about.

xQ. 44. Did you afterwards, I mean after July, 1899, request Mrs. Vance to attend at the Hotel Lincoln in this city at the time that the depositions were being taken there in this cause on behalf of complainant?

A. At about that time I sent word to Mrs. Vance asking her to call and see me in relation in the matter, but she returned word that I would have to do the business with her husband. I saw her husband and he told me that Mrs. Vance would not go to the trouble of attending the hearing any place without being very liberally compensated for so 237
doing, and he intimated as a figure that about fifty dollars would be about a fair compensation for her repeating her statement and putting it in evidence. I had the statement and showed it to him and told him that we did not object to compensating her for her time legitimately, but that we did not propose to pay any one fifty dollars for a few moments testimony. He then spoke of my paying for his expenses on a trip to New York for himself and their hotel bill, there for four or five days, which I also declined to do. I asked him, however, to ask

238 Mrs. Vance to come to the Hotel Lincoln and that I would see her there, which she did.

Defendant's Counsel objects to the entire answer of the witness as not responsive to the question, and gives notice that he will move that such answer be suprressed. Counsel also requests witness to answer the question last given to him.

xQ. 45. Did Mrs. Vance attend at the Hotel Lincoln in this city at the time the depositions were being taken there in this cause on behalf on complainant?

A. Yes, sir.

239 xQ. 46. Do you personally sell typewriting machines?

A. Yes, sir.

ARTHUR A. BAER, a witness called on behalf of complainant, after being duly sworn, testified as follows:

Direct examination by Mr. Donnelly.

Q. 1. What is your name, age, residence and occupation?

A. My name is Arthur A. Baer; age thirty-one; residence, Pittsburg, Pa.; occupation manager for
240 the United Typewriter and Supplies Co. in the City of Pittsburg.

Q. 2. About how long have you been in the employ of the United Typewriter and Supplies Co.?

A. Going on five years.

Q. 3. Where have you been engaged in the service of said company?

A. In Pittsburg, Pa.

Q. 4. What is the business of the United Typewriter and Supplies Co.?

A. We sell typewriters and typewriter supplies.

Q. 5. What typewriters do you sell; that is, what are the names of the machines?

A. Densmore, New Century, Yost, and Brooks. 241

Q. 6. Prior to the time when you entered the service of the United Typewriter and Supplies Co., had you any experience in the sale of typewriting machines, and if so, what machine and where and when?

A. Previous to my starting with the United Typewriter and Supplies Co., I sold the Densmore Typewriter for four years, previous to that the Bar Lock typewriter for one year, and still previous to that the Caligraph typewriter for one year.

Q. 7. During the time you have been engaged in the typewriter business as you have heretofore stated, have you been familiar with the classes of people who purchase typewriters, and have you 242 observed as to the manner in which they purchase them?

A. Yes; I believe I have had dealings with all classes of typewriter purchasers.

Q. 8. What classes of persons or concerns purchase typewriting machines?

A. Pretty near all classes, excepting the laboring class.

Q. 9. According to your observation and experience, to what extent are the persons who purchase typewriting machines practical operators thereof or familiar with the construction and operation of the machine or machines which they purchase?

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Defendant's counsel objects to the foregoing question and to any answer that may be made thereto as immaterial and irrelevant, and as not proper rebuttal testimony, and it is understood that without repetition this objection shall be considered as made to any and all questions and answers of this deposition to which it may be applicable.

A. At least seventy per cent. are not familiar with the construction of the machine.

Q. 10. To what extent, according to your observation and experience, does the ordinary purchaser examine into the details and minutia of the machine?

244 A. The real purchasers of typewriters very rarely look into the construction or manipulation of the machine at all.

Q. 11. To what extent, if at all, do the ordinary purchasers of typewriters rely upon the statement of the salesman or agent who sells the machine or upon the name associated therewith?

A. We find in nearly all cases that statements made by our salesmen are often against the rules and regulations of the office, and in many cases we have had to follow the guarantees made by such salesmen.

Q. 12. To what extent does the name which has been associated for many years with a typewriting
245 machine a factor in the sale thereof?

A. To a very large extent.

Q. 12. Have you sold writing machines in competition?

A. Yes, sir; quite a few.

Q. 13. Speaking from your own observation and experience, what do you say as to whether or not the name "Remington," which is associated with a writing machine, such for example as that manufactured by Wyckoff, Seamans & Benedict, is a factor in the sale thereof?

A. We find, or I find that the name "Remington" connected with a typewriter is a big factor in the sale of a machine.

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Cross examination *de bene esse*, by Mr. Fisher.

xQ. 14. By what companies are the Densmore, New Century, Yost and Brooks typewriting machines manufactured?

A. I don't know who manufactures the Brooks, and I believe the Densmore is manufactured by the Densmore Typewriter Co., the New Century by the American Writing Machine Co., and the Yost by the Yost Writing Machine Co. This is merely belief on my part.

xQ. 15. Are these several companies associated with Wyckoff, Seamans & Benedict in the so-called typewriter trust?

A. Not that I know of. 247

xQ. 16. Are they associated with Wyckoff, Seamans & Benedict in any way, or is the United Typewriter & Supplies Co. associated with Wyckoff, Seamans & Benedict in any way?

A. Not that I know of.

xQ. 17. Does not the United Typewriter & Supplies Co. receive orders from Wyckoff, Seamans & Benedict?

A. I never received any in the four years I have been running the Pittsburg office.

xQ. 18. Are any of the machines or the companies manufacturing such machines, that are represented by the United Typewriter & Supplies Co. in any manner connected with or controlled by the 248
Union Typewriter Co.?

A. Not that I know of.

xQ. 19. It is your understanding, is it, that the United Typewriter & Supplies Co. and the companies manufacturing the Densmore, New Century, Yost and Brooks machines, and Wyckoff, Seamans & Benedict and the Union Typewriter Co., are in no manner connected or associated, is that correct?

A. That is correct, as far as the Wyckoff, Seamans & Benedict are concerned, but selling the four other machines, I always took it for granted the companies or the company handling these machines were friendly to each other.

xQ. 20. Did you ever hear of the typewriter trust? 249

Question objected to as immaterial and irrelevant and as calling for hear-say evidence.

A. I often heard of one, but never knew of one.

xQ. 21. What companies do you understand are included in the so-called typewriter trust?

Same objection as last.

A. My answer is based on rumors only, and I have heard it rumored that the Yost, Densmore, New Century, Remington, Smith-Premier, Fisher, Underwood and Manhattan, were all controlled by a trust.

250 CIRCUIT COURT OF THE UNITED STATES.

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT,
Plaintiff,

against

The HOWE SCALE COMPANY of 1886,
Defendant.

Testimony taken on behalf of the complainant,
251 before Sidney C. Ormsby, a Notary Public in and for the County of Kings, State of New York, (certificate on file in New York County) and Special Examiner by consent at the offices of Messrs. Donnelly & Felbel, No. 280 Broadway, New York, on Friday, January 4th, 1901, at 11 o'clock A. M.

APPEARANCES.

H. D. Donnelly, Esq., for Complainant;
George P. Fisher, Jr., Esq., for Defendant.

JOHN F. McCLAIN, a witness called on behalf of the complainant, having been first duly sworn, testifies as follows:

252 Direct Examination by Mr. Donnelly:

Q. 1. State your name, age, residence and occupation.

A. John F. McClain; age, 35; residence, 393 West End avenue, New York; occupation, General Superintendent of Sales for Wyckoff, Seamans & Benedict.

Q. 2. What experience, if any, have you had in the typewriter business—with what companies have you been associated in that business, and what positions, if any, have you held with the companies in whose service you have been engaged?

A. I have been for seventeen years in the type- 253
writer business—one year with the Hammond Typewriter Co., as manager for New York State, and sixteen years with Wyckoff, Seamans & Benedict. At first, as a stenographer, for one year, subsequently, manager of New York business, for about thirteen years; more recently, general director of their business in southern Europe, and, at present, general superintendent of their sales department.

Q. 3. And is your superintendency of the sales department of the business of Wyckoff, Seamans & Benedict confined to any particular locality; if so, what locality?

A. No. I have general supervision of the sale of 254
Remington goods the world over.

Q. 4. What was your position with Wyckoff, Seamans & Benedict in southern Europe, to which you have referred to in your previous answer?

Counsel for defendant objects to the question as immaterial, irrelevant and not proper rebuttal, and gives notice that at the proper time he will move the Court to suppress the question and any answer that may be made thereto.

A. As general director of the Remington business in France, Belgium, Spain, Portugal, Italy, Turkey and Greece. 255

Q. 5. Where were your headquarters at that time?

Same objections.

A. Head office located at 8 Boulevard des Capucines, Paris.

Q. 6. During the course of your employment with Wyckoff, Seamans & Benedict, and with the Hammond Company, have you made it part of your business at times to sell typewriting machines and to inform yourself as to the classes of customers who purchased typewriting machines and the manner of purchase, etc.?

256 A. Yes.

Q. 7. Speaking from your own knowledge and experience, please state what classes of people or concerns purchased typewriting machines?

Defendant's counsel objects to the question as not proper rebuttal.

A. All classes, all kinds and conditions of men, principally commercial men, professional men, etc., etc.

Q. 8. Is it or not a fact within your knowledge and experience that persons or concerns purchase typewriting machines who had never before been owners or users thereof, and are unacquainted with the
257 construction, or details of construction, or mode of operation of such machines?

Same objection.

A. The bulk of our business is with that class of people—persons not acquainted with the physical characteristics of the machine.

Q. 9. Is it a fact that the majority of purchasers, or intending purchasers, of typewriting machines, are unacquainted with the physical appearance or characteristics of the typewriting machines which they purchase?

Same objection; and the question is further objected to as leading.

258 A. Yes.

Q. 10. To what extent is it a fact that the owners and purchasers of typewriting machines are not practical operators thereof?

Same objection.

A. In this country very few of the buyers are operators.

Q. 11. In the purchase of typewriting machines, upon what, if anything, does the ordinary purchaser rely as regards his obtaining the machine which he desires to purchase?

Same objection.

A. General reputation. 259

Q. 12. Are you familiar with the general reputation of the so-called Remington typewriter, and if so, will you please state to what extent the reputation of that machine and the name "Remington" which is associated therewith, enter as factors in the sale of that machine?

Same objection.

A. The reputation of the machine is such that I find everywhere a predisposition in its favor and in many cases on the part of people who don't know why they have it, who never saw a typewriter, and never used one, but who instinctively think of "Remington" when the subject of writing machines 260
is mentioned; and who to that extent are prejudiced in its favor. I find also salesmen of other machines frankly admit that it is Remington name rather than Remington merit that they find the hardest to fight.

Q. 13. Speaking from your own knowledge and experience, to what extent in your judgment would the name "Remington," or does the name "Remington," aid in the sale of typewriting machines irrespective of its particular construction or mode of operation?

Same objection.

261

A. Half the battle.

Q. 14. In what country are most of the typewriting machines which are sold throughout the world, manufactured, so far as you know or have observed?

A. Almost exclusively in the United States.

Q. 15. And to what extent are the Remington machines and the other makes of machines sold in European countries with which you are familiar?

Counsel for defendant objects to the question, and any answer that may be made thereto, as immaterial, irrelevant and having no bearing whatever upon the issues involved in this case;

262 for the further reason that the defendant in this cause, the Howe Scale Company, is alleged in the bill of complaint to be merely the selling agent of the Rem-Sho typewriter for the United States, and the bill of complaint offers no allegation that will warrant the introduction of testimony relating to the sale of typewriting machines in any foreign country. And counsel gives notice that at the proper time he will move the Court to expunge the question and answer from the record.

A. The Remington machine is sold throughout the civilized world. In the leading European countries certain other machines are extensively represented. In Paris, for example, twenty-one American typewriters are represented. About the same number in London, Berlin and other capitals.

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xQ. 16. If you know, state whether or not the so-called Remington-Sholes or Rem-Sho is represented or sold in Paris or any other places which you have mentioned?

Same objection as to the last question.

Defendant's counsel being advised by counsel for complainant that a large part of the deposition of this witness will relate to matters transpiring in foreign countries, and having to do with the sale of typewriting machines in such countries, desires to enter upon the record the following objection, which, by agreement of counsel, it is understood shall apply to all questions and answers in this deposition to which said objection may be applicable said objection being as follows:

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Defendant's counsel objects to all questions and answers relating to matters transpiring in foreign countries, for the reasons following, viz.: such matters are immaterial and irrelevant; are not in support of any allegation found in the bill of complaint wherein it is

alleged merely that the defendant, The Howe 265
Scale Company of 1886, is the sales agent for the United States; for the further reason that it has not and cannot be proven that the defendant or the Remington-Sholes Company, or any one authorized to act for them, or either of them, was responsible for any of the acts or doings that may be referred to by the witness; for the further reason that the testimony calls for matters transpiring in other countries, and determinable by the laws of such countries, so far as concerns their legality or propriety, and not by the laws of the United States; for the further reason that the matter inquired of is not proper rebuttal, no 266
testimony whatever having been offered on behalf of the defendant with respect to matters occurring in foreign countries. Counsel gives notice that before the hearing he will move that such objectionable matter be suppressed.

A. The Rem-Sho typewriter is represented in all the leading capitals of Europe, including Paris, London, Berlin.

Q. 17. State whether or not from your knowledge and experience the ordinary purchaser of typewriting machines in Europe is less familiar with the construction, mode of operation of typewriting ma- 267
chines and the origin of the various makes, than the ordinary purchaser in this country?

A. If you mean to ask whether their knowledge of the appearance of the machines or of any machine is sufficient to enable them to say off-hand which it is, I would say they are not so well posted in Europe as in this country. They know the word "typewriter" and they know the word "Remington," but the majority of them do not know whether it looks like a bicycle or a sewing machine. At the Exposition, the exhibit of cash registers was by most continental people regarded as an exhibit of writing machines.

268 Q. 18. Did you attend the Paris Exposition recently held in Paris?

A. Yes.

Q. 19. Do you know whether the Remington-Sholes Company had an exhibit at the Paris Exposition, which was held last year?

A. Yes.

Q. 20. Did you see their exhibit or their display at the Exposition?

A. Yes.

Q. 21. Do you know Franklin Remington, and if so, did you see him at the Paris Exposition, at the same time?

A. I know Mr. Franklin Remington only by sight.
269 He was there and very much in evidence during my entire stay at the Exposition.

Q. 22. Did you see him in or about the exhibit of the Remington-Sholes Company at the Exposition?

A. Yes; he assisted in unpacking and setting up the exhibit.

Q. 23. Is that the Franklin Remington who is advertised as the general manager of the Remington-Sholes Company?

A. Yes; the same.

Q. 24. What, if anything, did the Remington-Sholes Company display at the Paris Exposition in the way of machines or goods or wares which they sold?

270 A. They exhibited five or six samples of their regular machine, and in connection with it exhibited what they called the *original* Remington machine, "from which their present models were evolved."

Q. 25. I show you what purport to be two photographs of a crude writing machine and ask you to examine the same, and to state whether or no you have ever seen the machine of which these are photographs, and if so, tell the Court where and when you saw such machines, and whether the photographs are correct representations of the said machines, and the advertisement displayed therewith?

A. The photograph which I mark No. 1, is a pic- 271
ture of the old hand-made model as it originally appeared in connection with the Rem-Sho exhibit. The photograph marked No. 2 is the same machine, the picture being taken after an announcement had been placed over the working parts of the instrument. I personally examined this machine, and found it to be one of the hand-made models of the Sholes and Glidden typewriter, in the form in which it was first brought to the works of the Remington Company, at Ilion, by the promoters. The machine in question is the property of the Buffalo Historical Society, and on the first day it was exposed it bore a card to that effect, which card was removed the following day, and the announcement substituted 272
which now appears in photograph No. 2.

The regular exhibit of Rem-Sho machines occupied a series of shelves along with machines of various other makes. A few paces away, and on a separate table, was displayed what they termed their retrospective exhibit, which, as before stated, consisted of the machine shown in this photograph, together with photographs of three generations of the Remington family—the grandfather and father of Mr. Franklin Remington, and the photograph of Mr. Franklin Remington himself. Wyckoff, Seamans & Benedict also had a retrospective exhibit, which consisted of a specimen of every typewriter ever manufactured under the name "Remington," 273
commencing with the model No. 1, being the first machine manufactured by the Remingtons, after the model of the Sholes and Glidden hand-made machine shown in the photograph.

The photographs which have been shown to and identified by the witness, are marked for identification "Complainant's Photographs, Nos. 1 and 2, Paris Exposition."

Direct examination closed.

Deposition closed.

274 GEORGE J. WALLAU, a witness called on behalf of the complainant, having been first duly sworn, testifies as follows:

Direct examination by Mr. Donnelly:

Q. 1. State your name, age, residence and occupation?

A. George J. Wallau; residence, 321½ State st., Brooklyn, age 29, occupation, employee of Wyckoff, Seamans & Benedict.

Q. 2. How long have you been in the employ of Wyckoff, Seamans & Benedict?

A. I went with Wyckoff, Seamans & Benedict, originally on the first of May, 1891, remaining until
275 October 1, 1895, when I went into business on my own account, and returned with them in August, 1898.

Q. 3. Did you or not attend the Paris Exposition, held in the year 1900, in the City of Paris, and if so, on whose behalf and in what capacity did you attend said Exposition?

Defendant's counsel objects to the question and answer, and as well also to any other questions and answers of this deposition having to do with matters transpiring in foreign countries, for the reason set forth at length after the 16th question in the deposition of Mr. McClain, and it is understood
276 that without repetition this objection shall be regarded as made to all such questions and answers as it may be applicable to, and counsel gives notice that before the hearing of the cause he will move the court that such objectionable matter be suppressed.

A. I was manager of Wyckoff, Seamans & Benedict's exhibit at the Paris Exposition, and as such was there from the opening to the closing of the same.

Q. 4. Do you know whether the Remington-Sholes Typewriting Co. had an exhibit at the Paris Expo-

sition, and if so, will you kindly state what, if anything, they displayed in the way of writing machines, etc.? 277

A. The Remington-Sholes Company exhibited a number of Remington-Sholes typewriters of different width carriages and of different colors. They exhibited a handmade model of the Sholes and Glidden typewriter, that is a model upon which the Sholes and Glidden typewriter was based, which was afterwards made by E. Remington & Sons; the model, however, was not marked "Sholes and Glidden."

Q. 5. Did you see and examine the model of a typewriting machine to which you have referred in your last answer as being displayed by the Remington-Sholes Company at the Paris Exposition? 278

A. Within a very few minutes of the opening of the case containing a model of a typewriter, and which was opened by Mr. Franklin Remington, I examined the same carefully, noticing a brass plate bearing the inscription "Loaned by the Buffalo Historical Society." A few hours later this plate was removed, and a type-written card placed on the machine which remained until the end of the exhibit, the position of which varied at times, it being either placed on the top of the carriage between the rubber cylinder and the paper feed roll, or stood upon the finger keys against the front of the machine. 279

Q. 6. Was this model of a typewriting machine and the announcement on the card which was placed thereon so shown and exhibited that people visiting the Exposition could see the machine and read the announcement?

A. The machine stood on a glass case, having table legs, so that the machine and the announcement were even with the eye of the average visitor.

Q. 7. Could the announcement be read by the passerby?

A. The announcement not only could be read, but was probably read more than any other announcement in the typewriter section.

280 Q. 8. I now show you two photographs which have been marked for identification "Complainant's Photographs Nos. 1 and 2, Paris Exposition," and ask you to examine the same, and state what they represent, and what you know about the making of the said photographs?

A. I recognize these two photographs as two which I had made in Paris last summer, the same being the machine exhibited by the Remington-Sholes Company, as their retrospective exhibit.

Q. 9. Do these photographs correctly represent the model machine and the announcement accompanying the same, which were exhibited at the Paris Exposition last year, by the Remington-
281 Sholes Company as its retrospective exhibit?

A. They do.

Q. 10. In order that the announcement which accompanied said model machine may appear upon the record in this case, I ask you to read the same to the typewriter operator?

A. The announcement which is headed "Remington-Sholes Company" reads as follows:

"This machine is the first practical typewriter ever made and was the invention of Mr. C. Latham Sholes, the father of the inventor of the Rem-Sho typewriter. It was later improved and manufactured by the well known firm of E. Remington & Sons. This machine though crude contains many of the
282 principles upon which the Rem-Sho typewriter, the invention of the younger Sholes is built. . . . . Please don't touch."

In parallel column the identical announcement appeared in French.

The photographs which have been shown to and identified by the witness are offered in evidence and marked "Complainant's Exhibit, Photographs Nos. 1 and 2, Remington-Sholes Retrospective Exhibit at Paris Exposition, S. C. O., Spec. Exr, Jan. 4, 1901."

It is agreed that the objections heretofore made to the deposition of this witness are

also made to the introduction in evidence of the exhibit. 283

Q. 11. Do you know Franklin Remington, who is associated with the Remington-Sholes Company, and who is designated as its General Manager?

A. Though never introduced to Mr. Franklin Remington, I had occasion to meet him a great many times during the course of the Exposition. The first time being the morning he opened up the retrospective exhibit of his company.

Q. 12. Did you frequently see him in or about the exhibit of the Remington-Sholes Company, and did he manifest any interest therein, so far as you observed, and what if anything did he do?

A. Mr. Franklin Remington was invariably present when anything of importance to the interests of typewriter exhibitors was about to occur, such as the examination of the machines by the Jury, when he presented the Remington-Sholes side of the case. He was frequently to be seen at the headquarters of the United States Commission, where he represented the interests of the Remington-Sholes Company. 284

Q. 13. To your knowledge, while you were in Paris last year, was there any agency or an office in Paris, where the Remington-Sholes or Rem-Sho typewriter was offered for sale?

A. From the time of my arrival in August, 1898, there was a store for the sale of the Rem-Sho typewriter, in the name of the Remington-Sholes Company, that was the sign over the door, and the letter heads and advertising matter distributed all bearing the name of the Remington-Sholes Company. The word "Company" being translated into French and reading "Compagnie." 285

Q. 14. Do you know or have you any personal knowledge as to the fact, whether Franklin Remington visited the Remington-Sholes Company's agency in Paris, or took any part in the business thereof?

286 A. No other knowledge, but that he was usually in the company of the local manager.

Q. 15. Did you know the local manager of the so-called Remington-Sholes Company in Paris?

A. I knew him by sight, as I did Mr. Franklin Remington.

Q. 16. How often did you see the local manager and Franklin Remington together?

A. In a general way, I should say a dozen times.

Q. 17. Does Wyckoff, Seamans & Benedict maintain an office for the sale of typewriting machines in Paris, and if so, under what business name, if any, is their Paris business carried on?

A. They maintain a large office at No. 8 Boule-
287 vard des Capucines, the business being transacted under the name of the Remington Standard Typewriter Company.

Q. 18. I show you what purports to be a French publication, and ask you to examine the said publication, and to say whether you are familiar with it, what it is and where it is published?

A. The journal handed to me, the title of which is "La Machine a Ecrire" is a trade journal devoted to the general interests of the typewriter interests in France. It is published in Paris and carries a large line of advertising from pretty much all of the typewriter makes which are offered for sale in the French market.

288 Q. 19. Is this a publication in which all of the companies or agencies which are engaged in the sale of typewriting machines in France advertise their machines?

A. It is.

Q. 20. Are you familiar with the French language?

A. I have spoken French all my life.

Q. 21. Are you able to read and translate the French language into English correctly?

A. Yes.

Q. 22. I call your attention to an advertisement of the so-called Rem-Sho typewriter, which appears on the first inside cover of the French publication

which has been shown you, and also to a paragraph 289
which occurs on page 43, under the heading of "Echos and News," and ask you to say whether the translation which is annexed to said advertisement, and the translation which is annexed to the paragraph under the heading "Echos and News" are respectively correct translations thereof?

A. Both translations are substantially correct.

The publication which has been shown to and identified by the witness, and particularly the said advertisement of the Rem-Sho typewriter on the inside of the first cover thereof, and the paragraph on page 43 of said publication, under the heading "Echos and 290
News" are offered in evidence and marked "Complainant's Exhibit La Machine a Ecrire, S. C. O., Spec. Exr., Jany. 4, 1901."

It is understood that the objections heretofore made in the course of the deposition of this witness is also made to the introduction of this exhibit, and the further objection is made that it has not been shown that the advertisement referred to in the exhibit emanated in any manner from the defendant or from the Remington-Sholes Company or from any one authorized to act in their behalf. The introduction of the translation of the paragraph appearing under the head of 291
Echoes and News is further objected to as being fragmentary and only part of a complete sentence which relates to an entirely different Subject.

Complainant's counsel has no objection to defendant's counsel putting in any additional matter appearing in said publication, which he desires to introduce, explanatory or otherwise, of the portion of said publication which he has introduced in evidence.

Direct Examination closed.

Deposition closed.

292 After Recess.

GEORGE THEODORE NEWTON, a witness called on behalf of the complainant, having been first duly sworn, testifies as follows:

Direct examination by Mr. Donnelly:

Q. 1. State your name, age, residence and occupation?

A. George Theodore Newton; age, 29; occupation, manager for Wyckoff, Seamans & Benedict, New Haven, Conn.; residence, 431 Orange Street, New Haven.

293 Q. 2. How long have you been manager of the sales department of Wyckoff, Seamans & Benedict, at New Haven?

A. Since November 1, 1899.

Q. 3. And has your service with them been continuous at New Haven since November, 1899, up to the present time?

A. It has.

Q. 4. What business, if any, are Wyckoff, Seamans & Benedict carrying on, of which you are the general manager at that place?

A. The sale of typewriters and typewriter supplies.

Q. 5. I show you what purports to be a letter 294 from a gentleman by the name of H. W. Phillips, dated January 8, 1900, and ask you to examine the same and tell the court what you know about the said letter.

Defendant's counsel objects to the question, and any answer that may be made thereto, as immaterial and irrelevant, and as not being in rebuttal of any testimony produced on behalf of the defendant, and it is agreed between counsel that to avoid repetition the same objections shall be understood as made to all that part of the deposition of the witness relating to said letter, or any matter con-

nected therewith, and to the introduction of 295
of evidence of the said letter; and counsel gives notice that before the hearing of the cause he will move the court to strike out such objectionable matter.

A. I recognize the said letter as one received by me on January 9, 1900, through the mails, at the New Haven office.

Q. 6. After you received that letter what did you do in reference thereto?

A. I wrote in reply that I would call on Mr. Phillips, at his home, that evening, and go over the circumstances with him in person.

Q. 7. Did you call at Mr. Phillips' home? 296

A. I did.

Q. 8. And did you call there in pursuance of his letter to the Remington agency and your reply thereto that you would call?

A. I did.

Q. 9. Did you meet Mr. Phillips at his home on the occasion of your call?

A. I did.

Q. 10. Did he show you or did you examine any machine which is referred to in his letter to the Remington agency?

A. I did.

Q. 11. What kind of a machine did Phillips show you, or did you see on the occasion of your visit to 297
his home?

A. A Remington-Sholes typewriter.

Q. 12. Whereabouts in New Haven did Phillips then reside or have his home?

A. 336 North Quinnepiac, Fair Haven.

Q. 13. Do you know where the envelope is in which the letter which was received, or purports to have been written by Mr. Phillips, was contained at the time you received it?

A. I do not.

Q. 14. Did you afterward, that is after having visited Mr. Phillips' home, and after inspecting the

298 so-called Rem-Sho machine which he exhibited to you, obtain said machine?

A. I did.

Q. 15. Please examine the machine which I now show you, and say whether or no that this is the machine which you saw when you first visited Mr. Phillips at his home in New Haven?

A. It is.

Q. 16. Have you ever seen any bill or invoice which purported to be the bill or invoice which Phillips received at the time he obtained this so-called Rem-Sho typewriter?

A. I have.

Q. 17. Did you see what purported to be the
299 original bill?

A. I did.

Q. 18. In whose possession was the invoice or bill at the time you saw it?

A. In the possession of Mr. Phillips.

19. Do you know where said original bill is at the present time, or have you any means of knowing where it can be obtained?

A. No.

Q. 20. Do you know where Mr. Philips at present resides or can be found?

A. I do not.

Q. 21. Have you endeavored to find out his whereabouts, for the purpose of obtaining his
300 attendance here as a witness?

A. I have.

Q. 22. Have you been able to ascertain his present whereabouts?

A. I have not.

The machine which has been shown the witness and which has been identified by him, is offered in evidence, and is marked "Complainant's Phillips Exhibit, Rem-Sho typewriter, S. C. O., Spec. Exr. Jan. 4, 1901."

Complainant's counsel also marks for identification the copy of the bill which has been shown to and identified by the witness as the

copy which he made from the original bill in Phillips' possession, "Copy of Phillips' Bill." 301

Defendant's counsel objects to the introduction of the exhibit for the reasons heretofore given, and objects to the statements regarding the invoice for such reasons, and also as being incompetent, and not the best evidence.

Complainant's counsel now offers in evidence the letter purporting to have been written by H. W. Phillips to Remington Agency, dated January 8, 1900, and the same is filed in evidence and marked "Complainant's Exhibit, Phillips' letter, S. C. O., Spec. Exr., Jan. 4, 1901." 302

Objected to for the reasons before given.

Direct examination closed.

Cross examination by Mr. Fisher:

Defendant's counsel, without waiving his objections to the deposition of the witness, makes the following cross-examination *de bene esse.*

xQ. 23. How long have you been in the service of Wyckoff, Seamans & Benedict?

A. About eight years.

xQ. 24. During that time where have you been employed, and what has been the character of your duties? 303

A. As a salesman in Boston; on special work in New York; and as manager of the New Haven office.

xQ. 25. What was the character of your special work in New York?

A. Investigating the conditions of trade in various territories.

xQ. 26. How long were you engaged in this work and how long were you engaged at Boston?

A. I was engaged on special work in New York for a period of three months, previous to which time

304 I had been in other business for about one year, before that having been employed as a salesman in Boston.

xQ. 27. Have you ever been employed upon any work connected with this litigation or upon any investigation connected with this litigation?

A. I have not.

xQ. 28. Did you open the envelope in which Complainant's Exhibit Phillips' Letter was received?

A. I did.

xQ. 29. What did you with the envelope?

A. Presumably threw it in the waste basket.

xQ. 30. You have no distinct recollection up on that point?

305 A. I have not.

xQ. 31. Did the envelope contain a street number and address?

A. It was addressed to the Remington Typewriter Agency, New Haven, Conn. There was no street address on it.

xQ. 32. You are positive, are you, that you have stated exactly the address upon such envelope?

A. To the best of my recollection, I have.

xQ. 33. Are you positive that it was not addressed Wyckoff, Seamans & Benedict?

A. I am.

xQ. 34. And you are equally positive that there was no street or number; is that correct?

306 A. I am.

xQ. 35. Had you ever seen or heard of Mr. Phillips prior to the time that you called upon him after receiving his letter?

A. No.

xQ. 36. How soon after the receipt of the letter did you call upon Mr. Phillips?

A. In the evening of the same day.

xQ. 37. Had you ever been at his home before, or have you ever been there since?

A. No, sir.

xQ. 38. When Mr. Phillips showed you the invoice of the Rem-Sho machine, did you request

him to give you the invoice, or did you simply 307
make a copy of it?

A. I made a copy of it.

xQ. 39. Do you know what Mr. Phillips' business was?

A. He was engaged in literary work.

xQ. 40. What kind of literary work?

A. Newspaper reporting, mostly.

xQ. 41. Where was he employed?

A. I do not know where at that exact time.

xQ. 42. What effort have you made to find Mr. Phillips?

A. I have inquired at his former home in New Haven of one of the newspapers where he had been employed, and of several personal acquaintances of 308
his.

xQ. 43. When did you make these inquiries?

A. About a month ago.

xQ. 44. Who was living at his old home when you inquired there:

A. I do not know.

xQ. 45. Did you go personally to his old home to make these inquiries?

A. I did not.

xQ. 46. You sent some one else?

A. I did.

xQ. 47. Did you go personally to the newspaper offices?

A. I did. 309

xQ. 48. Had he previously been employed at the office at which you called?

A. He had.

xQ. 49. What did they say at the office regarding his address?

A. Said they had no idea whatever of his present whereabouts.

xQ. 50. At what newspaper office did you call?

A. The *New Haven Leader*.

xQ. 51. Did they tell you when he left or where he went after leaving?

A. They told me that he had not been connected

310 with them for some little time previous to the time of my call, and they knew nothing whatever about him after he left their employ.

xQ. 52. If I understand you correctly, they gave you no address of Mr. Phillips, nor indicated in any way where he had gone or where he might be found; is that correct?

A. It is.

xQ. 53. Did you request Mr. Phillips to make any statement regarding his purchase of the Rem-Sho typewriter?

A. Nothing except what he made voluntarily.

xQ. 54. He made no written statement; did he?

A. Not for me.

311 xQ. 55. Did he make a written statement for any one so far as you know or have been informed?

A. I think he had some talk with our New York office, but do not know what was done.

xQ. 56. Don't you know whether he made any written statement, or have you no information on this point?

A. No, sir.

xQ. 57. State when Mr. Phillips had his talk with your New York office?

A. Some time subsequent to my first interview with him; possibly several weeks later.

xQ. 58. How did he happen to have an interview with your New York office?

312 A. The interview was the outcome of certain correspondence between them and myself.

xQ. 59. When did you first report this Phillips matter to the New York office, and how did you happen to report it?

A. I considered it a matter of which they should be informed, and wrote them about it on the day following my first interview with Mr. Phillips, January 10, 1900.

xQ. 60. And what answer did you get to that letter?

A. A request to close a deal with Mr. Phillips, taking his Rem-Sho, so-called, in exchange.

xQ. 61. Did you close the deal with Mr. Phillips 313
yourself?

A. I did not at that time.

xQ. 62. Did you at a subsequent time?

A. I did.

xQ. 63. When and upon what basis?

A. We exchanged his Rem-Sho machine for a Remington on an even basis.

xQ. 64. A new Remington?

A. Yes, sir.

xQ. 65. Did you ever report any other matters to the New York office besides this Phillips matter relating to the Rem-Sho typewriter?

A. No, sir.

xQ. 66. Did you request Mr. Phillips to visit New 314
York?

A. Not at that time.

xQ. 67. When did you make such request?

A. Some weeks later.

xQ. 68. About when did he visit New York, I mean the New York office of Wyckoff, Seamans & Benedict?

A. I do not remember.

xQ. 69. Can you state approximately?

A. Hardly near enough to be at all accurate—February, 1900, some time I think in February, 1900.

xQ. 70. Did you see Mr. Phillips after his return 315
from New York?

A. I did.

xQ. 71. Where and when?

A. A few days later, in my office at New Haven.

xQ. 72. Was that the last time you saw Mr. Phillips?

A. No, sir.

xQ. 73. When did you see him after that?

A. I met him on a train on several occasions, covering probably a period of three or four months. I last saw Mr. Phillips about the month of May, 1900.

xQ. 74. In whose possession has the Exhibit

316 "Complainant's Exhibit, Phillips' Letter" been since it was received by you?

A. I presume either in the possession of our New York office or their attorney. I sent it to New York on January 10, 1900.

Cross Examination closed.

Deposition closed.

ROBERT MCKEAN JONES, recalled as a witness on behalf of the Complainant, testifies as follows:

Direct examination by Mr. Donnelly:

Q. 1. Please state whether you are the same
317 Robert McKean Jones who has already been called and testified as a witness in this suit?

A. I am.

Q. 2. I show you a German publication, and will ask you to state, what it is, and what you know about it?

Defendant's counsel objects to the question and any answer that may be made thereto, for the reason that such matter is immaterial and irrelevant, is not proper rebuttel, and for the further reason that it has not been shown that the defendant or the Remington-Sholes Co., or any one having authority to act for them, is in any manner responsible for or has
318 control of the advertising matters in foreign publications. It is agreed that without repetition this same objection may be understood as made to all questions and answers of this witness to which it may be applicable, and to apply also to the introduction of any exhibits, and counsel gives notice that before the hearing of the cause he will move the Court to suppress such objectionable matter.

A. The publication that you have handed to me is a copy of the Hamburg *Schreibmaschinen-Zeitung* or *Writing Machine Times* of the 15th of October,

1900, which was received in regular course of mail 319
by Wyckoff, Seamans & Benedict from a correspondent abroad. It contains upon the first reading page an article referring to the use of the Remington-Sholes typewriter by the Queen of Roumania, also an article on page 114, having reference to the Paris Exposition, in which the names of the Remington-Sholes Company, of Chicago, and Mr. Franklin Remington appear. Also a full page advertisement of the Remington-Sholes Company of Chicago, over the signature of Franklin Remington, general manager of said company. Also a list of the selling agents of different writing machines upon the Continent of Europe in which are named representatives of the Remington, the Remington-Sholes, the Rem- 320
ington-Standard and the original Remington Standard.

Q. 3. Is said German publication, The *Writing Machine Times* to which you have just referred, a regular publication, that is, one that is issued from time to time at Hamburg, Germany, in which writing machines of various makes are advertised?

A. My information would indicate that it is a regularly published periodical devoted principally to the interests of writing machines and users of such machines.

Complainant offers the said publication in evidence, particularly pages 109, 114, 119, and 321
the inside page of the back cover, for the purpose of showing how the machines manufactured and sold by the Remington-Sholes Company are designated in said publication, viz., "Remington-Sholes" and "Remington-Sholes Typewriter." The same is filed in evidence and marked "Complainant's Exhibit *Schreibmaschinen-Zeitung* October 15, 1900, S. C. O., Spec. Exr., Jan'y 4, 1901."

Defendant's counsel objects to the introduction of the exhibit for the reasons stated in the previous part of the deposition.

322 Q. 4. I now hand you an envelope in which there is a small booklet, such as is issued by the Remington-Sholes Company, and ask you to examine the same, and tell the Court what you know about the said booklet?

Defendant's counsel objects to the question, and any answer that may be made thereto, as immaterial, irrelevant and incompetent, and not proper rebuttal.

A. The envelope and enclosure handed to me is one that was received by Wyckoff, Seamans & Benedict in ordinary course of mail on the 31st of May, 1900. The enclosed pamphlet contains written on
323 the back cover the question: "Is this the same as your writer?" over the signature of "The R. H. Edmunds Co." of Columbia, South Carolina.

Q. 5. To whom is the envelope addressed?

A. To the Remington Typewriter Company, New York.

The said envelope and booklet which have been shown to and identified by the witness are offered in evidence and marked "Complainant's Exhibit R. H. Edmunds Co. Envelope and Rem-Sho Booklet, S. C. O., Spec. Exr., Jan'y 4, 1901."

324 Q. 6. What particular machine, that is, as regards model number, is principally sold by Wyckoff, Seamans & Benedict in this country?

A. The No. 6 model.

Q. 7. To what extent has the No. 6 model Remington Typewriter been advertised by Wyckoff, Seamans & Benedict in this country, and state in a general way the means whereby said model number has been advertised, and what, if any, emphasis has been placed on the number of the model in such advertisements?

Defendant's counsel objects to the question, and the answer which may be made thereto,

as being immaterial, irrelevant and not proper rebuttal, no foundation for any such line of testimony having been laid by the testimony on behalf of defendant. 325

A. The No. 6 model of the Remington has been very extensively advertised throughout the United States and Canada by a variety of different methods, largely by means of prominent display advertising in newspapers and other periodicals, of which a very prominent feature was the number of the model, a prominent feature of such advertising being a large figure, "6," designed to specially impress the model number on the eyes of the public.

Q. 8. What was the purpose of so advertising the No. 6 model? 326

Same objection.

A. To emphasize the number of the model and make the public familiar with the fact that it was something later and different from the model of the typewriters previously sold.

Q. 9. Have you at hand any such publication, showing and illustrating said method of advertising?

A. A number of the publications already offered in evidence in this case will illustrate to some extent the fact herein alluded to, but not so completely as newspaper advertisements not readily obtainable would do, if they were at hand. 327

Direct Examination Closed.

Cross-examination *de bene esse*, by Mr. Fisher:

xQ. 10. Wyckoff, Seamans & Benedict have advertised other models of their machines, have they not; such for example as the No. 2 and later the No. 7 and No. 8?

A. The No. 2 model was rarely advertised as the No. 2, as the designation Remington Typewriter was for years understood to refer to the current model. Since the introduction of the models 7 and 8, which are specials models, the No. 7 being for the

328 foreign market and the No. 8 for special purposes, these numbers have been advertised in conjunction with the No. 6, but at no time has the same degree of prominence been given to the associated numbers or to the numbers 7 and 8 in domestic advertisements that was given to the No. 6 for a long time after its first introduction in the market.

xQ. 11. Is it the practice at the present time of Wyckoff, Seamans & Benedict to advertise their typewriters as "No. 6"?

A. Not usually, the three numbers are associated together, but owing to the general familiarity of the public now with the current number of models, the numbers are but little employed.

329 Cross Examination Closed.

Deposition Closed.

Adjourned until Saturday, January 5, 1901, at 10 A. M.

JOHN B. CULPEPER, a witness called on behalf of the complainant, having been first duly sworn, testifies as follows:

Direct-examination by Mr. Donnelly:

Q. 1. State your name, age, residence and occupation?

330 A. John B. Culpeper; manager for Wyckoff, Seamans & Benedict, the manufacturers of the Remington Standard Typewriter in New York City; I have supervision of the business in Virginia and North Carolina; my residence is Richmond, Va., and will be 48 years of age this month.

Q. 2. How long have you been connected with Wyckoff, Seamans & Benedict, and what has been the nature of the service that you have performed for them during that time?

A. I have been connected with the firm since June, 1881, up to December, 1892, I was a dealer for the Remington typewriter for Virginia and North Carolina. In December, 1892, I was appointed sales

agent for Virginia and North Carolina; in April, 331
1899, I was appointed manager.

Q. 3. Under what name are Wyckoff, Seamans & Benedict carrying on the typewriter business in Virginia and North Carolina, of which you are the manager?

Defendant's Counsel objects to the question as immaterial and irrelevant and as not proper rebuttal.

A. The Remington Standard Typewriter Company.

Q. 4. Where is the principal office, of which you are manager, located?

Same objection. 332

A. Richmond, Va.

Q. 5. State whether or not you receive mail which is intended for Wyckoff, Seamans & Benedict, or the Remington Typewriter Company, at the Richmond, Va., office?

Same objection.

A. I received such mail at the office in Richmond.

Q. 6. Do you know a concern by the name of Davis & Rose, located at Henderson, North Carolina?

A. I know such a firm. 333

Same objection.

Q. 7. About how long have you known said firm, or any of the members of it?

A I have known Mr. Davis, of the firm, for some years. I have known Mr. Rose, of the firm, since October 18th, at which date I sold the firm a Remington typewriter.

Q. 8. Have you ever had any business transactions with Mr. Davis, prior to October, 1900, and if so, when?

Same objection.

334 A. Mr. Davis has been using a No. 2 Remington typewriter for eight or nine years, and he now has that machine in use at the Henderson Cotton Mills. As I have been selling Remington for nearly twenty years, the machine must have been purchased from me as dealer.

Q. 9. Have you had correspondence with the firm of Davis & Rose, or with either member of said firm?

Same objection.

A. Yes, we have had correspondence with that firm.

Q. 10. Received letters from them and replied to letters from them?

335

Same objection.

A. Yes, sir.

Q. 11. Do you know whether or not a writing machine called the Remington-Sholes or Rem-Sho typewriter has been in use in North Carolina, offered for sale there, and if so, for about how long, to your knowledge?

Same objection.

A. I think it has been on the market in that territory for about two years and a half.

Q. 12. I show you a letter addressed to the Remington Typewriter Co., Richmond, Virginia,

336 purporting to have been written by the firm of Davis & Rose, and ask you to examine the same, and to state what you know about said letter?

Same objection.

A. I know that this letter came to our office at Richmond, Va., and to the best of my belief I opened it and gave some instructions in regard to the answer, and regarding the sending of a Remington machine to Davis & Rose for examination.

Q. 13. Was said letter received at the Richmond office in due course of mail?

Same objection.

A. It was.

Q. 14. State whether or no you are acquainted with the handwriting of said letter, or whether you have received other letters from the same concern in the same handwriting relating to business transactions you have had with the said firm? 337

Same objection.

A. Several letters have been received at the Richmond office from Davis & Rose, relating to business transactions with this firm, and to the best of my belief they have all been in the same handwriting.

The letter which has been shown to the witness and identified by him, is offered in evidence, and is marked "Complainant's Exhibit, Davis & Rose Letter, S. C. O., Spec. Exr., Jan'y. 5, 1901." 338

Defendant's Counsel objects to the introduction of the letter in evidence upon the ground that it is immaterial, irrelevant, incompetent and not proper rebuttal testimony, no foundation for any such testimony having been laid in the testimony on behalf of defendant, and gives notice that at the proper time, he will move the court to strike from the record said exhibit, and as well also the deposition of the witness.

Direct Examination Closed. 339

Cross Examination by Mr. Fisher:

Defendant's Counsel without waiving his objections above made, makes the following cross-examination, *de bene esse:*

xQ. 15. In your answer to Q. 3, you have stated that Wyckoff, Seamans & Benedict carry on the typewriter business in Virginia and North Carolina, under the name of the Remington Standard Typewriter Company. Please state whether the Remington Standard Typewriter Company is an

340 incorporated concern under the laws of those States or any State?

A. I think the business which has been carried on, in the name of the Remington Standard Typewriter Company is in accordance with the laws of the State of Virginia.

xQ. 16. But you do not know whether it is a separate corporation or not; is that correct?

A. We understand it in our territory in the name of the Remington Standard Typewriter Company.

xQ. 17. Is that the name under which the business is transacted in your territory?

A. Yes, sir.

xQ. 18. Is that the name that appears upon your
341 letter headings, business cards, etc.?

A. Yes, sir.

xQ. 19. Do you know whether the Remington Standard Typewriter Co., which you represent, is an incorporated company?

A I have understood, that it was.

xQ. 20. Under the laws of what State do you understand it to be incorporated?

A. I could not say; all I know is that the business conducted in that name in our State is according to the laws and regulations of Virginia.

xQ. 21. Have you with you one of your business cards?

A. Yes, sir; that is it. (Handing card to counsel).

342 xQ. 22. How long have you transacted business in Virginia and North Carolina under the name of the Remington Standard Typewriter Company?

A. I cannot give the exact date; about, I should judge, a year and a half or two years.

xQ. 23. Prior to a year and a half, under what name was the Remington Standard Typewriter sold in your territory—I mean in the name of what company?

A. I was sales agent for Virginia and North Carolina, and the letter heads were printed in that way.

xQ. 24. Please give a direct answer to my question, 343
if you can?

A. John B. Culpeper, Sales Agent for Virginia and North Carolina. Remington Typewriter, at the top.

xQ. 25. Did you represent Wyckoff, Seamans & Benedict at that time?

A. Yes, Sir.

xQ. 26. When did you first meet either member of the firm of Davis and Rose?

A. I have known Mr. Davis, of the firm of Davis & Rose, for a number of years. It may have been six or seven years.

xQ. 27. Prior to a year and half ago did the name of Wyckoff, Seamans & Benedict appear 344
upon the letter heads, business cards, bill heads or other stationery used by you in connection with the sale of the Remington Standard Typewriter?

A. As stated before, the name John B. Culpeper, Sales Agent for Virginia and North Carolina, and also the Remington Typewriter were on the letter heads, and I cannot state positively whether the names "Wyckoff, Seamans & Benedict" were on them or not.

xQ. 28. You do not recall whether at any time prior to a year and a half ago the name "Wyckoff, Seamans and Benedict" appeared upon any of the letter heads, bill heads, or business cards used by you in connection with the sale of the Remington 345
Standard Typewriter or not; is that correct?

A. I do not think that it was.

xQ. 29. Did such name appear upon the catalogues, or advertising matter used by you in connection with the sale of the Remington Standard Typewriter, prior to a year and a half ago?

A. The general advertising on these catalogues, etc., was shown to advertise the Richmond business, and the name of Wyckoff, Seamans & Benedict may have been on them in some place; I mean the principle advertising on the front showed the Richmond office.

346 xQ. 30. But you do not recall whether or not the name "Wyckoff, Seamans & Benedict" appeared upon the circulars or other advertising matter used by you or not; is that correct?

A. In catalogues and other advertising matter the name generally appeared in some part of it.

xQ. 31. Did the usual red seal, such as appears on the Remington typewriting machine, also appear upon such catalogue or advertising matter?

A. The red seal has always appeared on every letter head or memorandum that has been furnished to the Richmond office, and may have been on some other advertising matter.

xQ. 32. Did the name "Remington Standard
347 Typewriter Company" appear upon any of the catalogues used by you in connection with the sale of the Remington Standard Typewriter; I mean prior to a year and a half ago?

A. Prior to the time that the Richmond business was conducted in the name of the Remington Standard Typewriter Company, the catalogues and other advertising matter had on them "John B. Culpeper, Sales Agent for Virginia and North Carolina." The name Remington Standard Typewriter Company did not appear prior to a year and a half ago or thereabouts.

xQ. 33. Prior to September 26, 1900, when had you been at Henderson, North Carolina, or when
348 had you last seen any one connected with the firm of Davis & Rose?

A. I was in Henderson, North Carolina, October 18th, 1900, and again on December 8th, 1900. On October 18th, I saw Mr. Davis and Mr. Rose, of the firm of Davis & Rose. On December 8th, I saw Mr. Rose of that firm.

xQ. 34. When were you in Henderson, N. C. last prior to September 26th, 1900?

A. I cannot give the exact date.

xQ. 35. Can you state approximately?

A. I think it was some time in the year 1899.

xQ. 36. Were you not there during the year 1900, 349
prior to September 26, of that year?

A. I was not.

xQ. 37. Did you have any correspondence with any one connected with the firm of Davis & Rose during the year 1900 prior to Sept. 26th?

A. Mr. E. G. Davis, of the firm of Davis & Rose, and who is also Secretary and Treasurer of the Henderson Cotton Mills, may have written to the Richmond office and ordered some supplies for the No. 2 Remington typewriter, which they are using, but I cannot say positively.

xQ. 38. What if anything, gives you the impression that there was any correspondence between Mr. Davis and your Richmond house? 350

A. He probably would write to our office for typewriter supplies, for the Remington typewriter he uses.

xQ. 39. Was Mr. Davis in the habit of getting his typewriter supplies from your Richmond office prior to September, 1900?

A. I suppose that he ordered supplies from us right along; I cannot say positively.

xQ. 40. Do you know whether he had any correspondence or communication with your Richmond office prior to September 26, 1900?

A. I cannot say positively.

xQ. 41. Have you the envelope in which Complaint's Exhibit Davis & Rose Letter was received? 351

A. I have not.

xQ. 42. What become of such envelope?

A. We generally open the letters that come to the office and throw the envelopes in the waste basket. This was probably what was done with this envelope.

xQ. 43. Are you able to state whether you personally opened this Davis & Rose letter or not?

A. As near as I can remember I opened this letter and gave instructions about answering it, and also about sending Davis & Rose a Remington machine for examination.

352 xQ. 44. In whose possession has this letter of Davis & Rose been since it was received by you?

A. I know that the letter was in Richmond office until it was asked for by the New York office.

xQ. 45. How did it happen to be asked for by the New York office, and when was the attention of the New York office first directed to this matter?

A. We received a letter from the New York office asking us to send to them a letter received by us from Davis & Rose; I cannot remember now what the purport of the letter was.

xQ. 46. When did you receive the request from the New office for this Davis & Rose letter?

A. I cannot give the exact date.

353 xQ. 47. How soon was it after September 26, 1900?

A. It was probably a week or ten days; something near that.

xQ. 48. And did you immediately send the Davis & Rose letter to the New York office?

A. Yes, sir.

xQ. 49. Then, if I understand you correctly, the Davis & Rose letter was sent to the New York office some time in the month of October, 1900; is that correct?

A. It might have been sent to them the latter part of September or the first of October, I cannot say positively; it was along about that time, as near as I can recollect.

354 xQ. 50. And if I understand you correctly, the Davis & Rose letter has been in the possession of the New York office since the early part of October, 1900; is that correct?

A. I cannot say where it has been since it left our office, but it was sent to them at New York, about the time before mentioned.

xQ. 51. How did you happen to notify the New York office about the Davis & Rose letter? Had you made any instructions to keep the New York office informed about matters of this kind?

A. We had received some communications from New York which made us believe that they would

probably want to see this letter, and it was sent to them when they asked for it. 355

xQ. 52. When did you receive such communication from New York?

A. I cannot say positively; it was prior to September 26, 1900.

xQ. 53. Can you recall the substance of such communication from New York, which you say you received prior to September 26, 1900?

A. I do not remember the substance of the letter.

xQ. 54. State all that you recall about it, please?

A. I cannot state any more than I said before, that it made me believe that they would like to see a letter of the kind of Davis & Rose.

xQ. 55. Have you, in your possession, the communication which you received from New York, I mean from the New York office? 356

A. We file all letters that are received from the New York office in our Richmond office; I haven't it with me.

xQ. 56. Do you recall whether the letter from the New York office of Wyckoff, Seamans & Benedict made any specific reference to Davis & Rose?

A. I cannot say positively.

xQ. 57. What is your best recollection on this point?

A. Of course, the name must have been mentioned if they asked me to send them the letter. To the best of my belief it was mentioned, after we wrote them that we had the letter. 357

xQ. 58. Was any mentioned made in your correspondence with the New York office of Wyckoff, Seamans & Benedict about Davis & Rose prior to September 28, 1900?

A. No mention was made in any letter from the New York office about Davis & Rose until we wrote them about the letter of Davis & Rose.

xQ. 59. Now, please state how you happened to call the attention of the New York office to this Davis & Rose letter, and whether it was in pursuance of any instructions that you had received from said New York office?

358 A. Not particularly from any instructions received from the New York office, but from the way the letter read I thought it ought to be sent to the New York office.

xQ. 60. Now, cannot you state what was the purport of the communication which you say you received from the New York office of Wyckoff, Seamans & Benedict, prior to September 26, 1900, and which I understand you to say caused you to send the Davis & Rose letter to said New York office?

A. I cannot say positively, but it might have contained words or information making us look carefully after the interests of the Remington type-
359 writer, and we thought a letter of this kind would be probably worthy of their perusal.

Defendant's counsel gives notice on the record that without waiving the objections heretofore made to the deposition of this witness, and to the depositions of various other witnesses that have been examined on behalf of complainant, during the taking of its rebuttal testimony, he will move the Court at such time as will best suit the engagements of counsel and the convenience of the Court, for leave to take such sur-rebuttal testimony as may seem necessary and proper.

360 Cross Examination closed.

Deposition closed.

SAMUEL WEINGART, called as a witness on behalf of the complainant, having been first duly sworn, testifies as follows:

Direct Examination by Mr. Donnelly:

Q. 1. Are you the same Mr. Samuel Weingart, who has already been called, and heretofore testified in this case?

A. Yes, sir.

Q. 2. Mr. Hamlin E. Hatch has testified on behalf

of the defendant in this case that he was a salesman in the employ of the Remington-Sholes Company, located in New York City in 1898, and that shortly before the 29th of June, 1898, when it appears you purchased a Remington-Sholes or Rem-Sho typewriter, he called at your school, sent in his card, and had a brief interview with you here. Please state whether you can now remember whether Mr. Hatch called upon you at your school here as stated, or sent in his card as he has stated, and briefly what you know or remember about the alleged interview? 361

A. I don't remember any such interview. I don't remember ever having seen Mr. Hatch. I am positive that I never heard of the Remington-Sholes Company, until a long time after I had bought the machine. 362

Q. 3. If Mr. Hatch did call upon you or send in his card, would such an instance necessarily impress itself upon your mind, and if not, please state why not?

A. It might have impressed itself upon my mind, because I contemplated buying a typewriter, but I am positive he did not call, although a great many agents hand in their cards to me, and I never look at them.

Q. Do you remember that Mr. Hatch, or any person who called on you at your school here, handed you or sent in to you any card referring to the Rem-Sho typewriter, or to the Remington-Sholes Company? 363

A. I do not remember.

Q. 5. A Mr. Thomas O. Parker has testified on behalf of the defendant in this case, that in June, 1898, and at the time you purchased the said Remington-Sholes typewriter, he was employed as a salesman for the Rem-Sho typewriter in the typewriter department of Page, Dennis & Company, 341 Broadway, New York, and that he was the person who sold you the Rem-Sho typewriter, the purchase of which was consummated on the 29th day of June, 1898. Mr. Parker has testified, in substance

364 and in effect, that you asked him if they had a Remington machine; that he told you no, but that they had a better machine, one which contained the best qualities of the Remington, with those of the Smith-Premier, and went on to explain to you the difference between the Rem-Sho typewriter, and the Remington, and then says that he explained somewhat in detail the differences between the Rem-Sho typewriter and the Remington typewriter, and he says, in substance and effect, that he told you they did not sell the Remington typewriter, and while not positive says he presumes he gave you a catalogue and advertising matter concerning the Rem-Sho typewriter. I ask you to state after having
365 heard the summary of Mr. Parker's testimony, concerning your purchase of a Remington-Sholes or Rem-Sho typewriter, whether his statement is correct?

A. No; it is not correct. I do not remember any such conversation.

Q. 6. Was there any such conversation according to your knowledge?

A. No; there was none.

Q. 7. Were there any such explanations of the Rem-Shoe machine, and difference between such machine and the Remington typewriter made to you, according to your knowledge or recollection?

A. I am positive there were not, because I never
366 heard the name "Sholes" until long after.

Direct Examination closed.

Cross-examination by Mr. Fisher:

xQ. 8. Had you never seen the name "Sholes" prior to your purchase of the Rem-Sho typewriter?

A. Never.

xQ. 9. I call your attention to Defendant's Exhibit, Rem-Sho Sign, from office of Page, Dennis & Co., and ask you to state whether you remember to have seen this sign at any time in the office of Page, Dennis & Co., or if you have seen any sign like it?

A. I was at the Howe Scales Co. to buy a scale when I noticed a sign saying that Remington type-

writers were sold in this store. I asked the sales- 367
man who sold me the scale whether they sold any Remington typewriters. He said yes, and introduced me to a gentleman on the other side of the store. The name Remington must have drawn my attention, otherwise I would not have thought of buying a machine in a store which I entered for the purpose of buying a scale.

xQ. 10. Will you kindly answer my question with regard to the sign that is now before you?

A. If I had seen it—the sign shown to me at present—I am sure I would have believed that a Remington typewriter was manufactured by a firm which called itself The Remington-Sholes Company, because I never knew who the manufactures of the 368
Remington typewriters were, nor where their factories were located, nor who their agents were.

xQ. 11. Now, will you please answer the question that I asked you, viz., whether you have ever seen this sign, or any sign similar to it, at the store of Page, Dennis & Company?

A. I have certainly seen a sign—I don't know whether it was this or one similar, I certainly saw a sign.

xQ. 12. If I understand you correctly, therefore, the sign that is now before you, and marked "Defendant's Exhibit Rem-Sho Sign from Office of Page, Dennis & Co." may have been seen by you prior to the consummation of your purchase of a 369
Rem-Sho typewriter. Is that correct?

A. Yes, that is correct.

xQ. 13. The sign referred to in my last question, reads as follows:

REM-SHO TPYEWRITERS.
Manufactured by
THE REMINGTON-SHOLES COMPANY.
Chicago, Ill.

Now, I ask you if you are able to state whether the sign which you saw in the office of Page, Dennis & Co. contained the name "Rem-Sho" or not?

370 A. I do not remember whether it contained the name Rem-Sho, but it must have contained the name "Remington," which was the only thing that attracted my attention.

xQ. 14. Do you remember anything about the color of the sign that you saw in the store of Page, Dennis & Co., or where the sign was located?

A. I know where it was located, that is all. It was located to the right side of the store as you entered, on the wall between the office of the gentleman to whom I was introduced and a store window.

xQ. 15. How does the sign that you see before you compare in size and color with the sign that
371 you say you saw in the office of Page, Dennis & Co., about the time you bought the Rem-Sho typewriter?

A. As much as I can remember; that is, I thought at the present time that it was not quiet as large as this one and black on white, but I am not sure about it.

xQ. 16. But you do remember that the sign you saw was a large sign, and that it was upon the wall over that part of the store in which Rem-Sho typewriters were sold; do you not?

A. Yes, sir.

xQ. 17. Do you remember whether upon the sign which you saw there was more than one line of lettering?

372 A. I do not. There may have been a few lines.

xQ. 18. Do you remember now whether the name "Sholes" was on the sign or not?

A. I do not.

xQ. 18. If I understand you correctly, it would have made no difference in your belief or impression even if the sign that you saw in the office of Page, Dennis & Co. was like this sign here before you; is that correct?

A. That is correct; it would not make any difference to me.

xQ. 20. You do not recall, I suppose, all the conversation that passed between you and Mr. Parker,

who has testified that he sold you the Rem-Sho 373
typewriter?

A. There was very little conversation; all I wanted to know was the price, and whether I could get a discount.

xQ. 21. Do you recall that Mr. Parker explained to you any advantages of the Rem-Sho typewriter over other typewriting machines?

A. No, I do not.

xQ. 22. Do you recall that he mentioned its superiority in the matter of basket-shift?

A. No, I do not recall any conversation at that time, as I had never used a typewriter I would not have understood the explanation anyhow.

xQ. 23. Do you recall that he mentioned anything 374
about the Smith-Premier typewriter?

A. Never; I mentioned it to him, I told him that I could get a Smith-Premier for the same price, $100.

xQ. 24. Did not Mr. Parker tell you that the Rem-Sho was better than the Smith-Premier, or compare the two machines in any way?

A. I do not remember. He may have said so but I would not have known the difference between the expression Rem-Sho and "Remington," having believed that "Rem-Sho" was an abbreviation for "Remington," that is all.

xQ. 25. Did you understand the name "Rem-Sho" at the time you purchased that machine to be an abbreviation of the word "Remington"? 375

A. No, I don't remember the name "Rem-Sho" at all; if it was used I took it for "Remington."

xQ. 26. Then, what do you mean in your last answer by stating "having believed that Rem-Sho was an abbreviation for Remington"?

A. I did not mean to say "having believed!" but better "might have believed" in case I used that expression, but I do not remember having heard the word "Rem-Sho" until long after I purchased the instrument.

xQ. 27. Do you mean to convey the impression that you would have believed the name "Rem-Sho" an abbreviation of the name "Remington" alone?

376 A. If he used it, yes. But I am not sure whether he used that name.

xQ. 28. What would you have considered the last syllable of "Rem-Sho" to have been an abbreviation of, and what has it that would suggest the name "Remington"?

A. I never knew that there was more than one kind of Remington typewriters, and when I saw the name "Remington" or manufactured by Remington, I only asked for the price, and if he had used the word "Rem-Sho" or "Remington-Sholes" even, which I am almost positive he did not, I would have thought it was one of the kinds of machines the Remingtons manufacture.

377 xQ. 29. Now, will you please answer the question as I have asked it?

A. I don't remember the name "Sho"; the more I am asked the less I remember that I heard the name "Sho."

xQ. 30. If I understand your testimony, then, it is to this effect that to the best of your recollection, you never heard the name "Sholes" until sometime after you bought the Rem-Sho typewriter, and the question of the name Rem-Sho or whether it was an abbreviation for any other words never was considered by you until the present, I suppose; is that correct?

A. That is correct.

378 xQ. 31. I call your attention to "Defendant's Exhibit Page, Dennis & Co. card," and ask you to state whether you recall having seen a card like this before or not?

A. I think I saw such a card, but I do not know whether I saw it before the purchase or after the purchase, but anyhow it would not have impressed me otherwise than that Page, Dennis & Co. are the representatives of the Remington typewriter.

xQ. 32. What is your best recollection as to whether you saw this card or one like it before your purchase of the Rem-Sho typewriter?

A. I cannot remember; I may have found one in the box when the typewriter arrived.

xQ. 33. I call your attention to "Defendant's Ex- 379
hibit Rem-Sho Catalogue No. 2 and 3" and ask you to state whether you remember to have seen such a catalogue before or not?

A. No, I do not. I do not remember that, because I would have kept it.

xQ. 34. Do you remember how many typewriters you saw in the store of Page, Dennis & Co., if you saw any, during the time that you called there?

A. To the best of my recollection I didn't see any. There was no necessity for the salesman to show me any, or to explain the advantages of this machine. The only purpose my conversation had was to find out how much I would have to pay for one.

xQ. 35. But you are not prepared to say posi- 380
tively that there were no typewriting machines exhibited there when you called?

A. No, I could not swear to it.

xQ. 36. Have you any recollection as to whether the salesman with whom you talked in the store of Page, Dennis & Co. mentioned to any other address at which typewriters were sold?

A. No,

xQ. 37. How often did you talk with that salesman—on how many occasions?

A. I came to the store twice, but I do not remember whether I spoke on both occasions to the same man.

xQ. 38. Are you prepared to state positively that 381
a card like "Defendant's Exhibit Page, Dennis & Co. Card" was not received by you at your residence, prior to the date when you bought the Rem-Sho typewriter.

A. I cannot remember; and even if I did it would not made any difference. But I must have known about Page, Dennis & Company, for I made out my check to them.

xQ. 39. How did you happen to go to the Howe Scale Company in the first instance?

A. It was a few days before I went to the country, and I visited several stores to buy a large scale, and so I came to the Howe Manufacturing Company.

382 xQ. 40. Do you recall passing the store of Wyckoff, Seamans & Benedict, or any other store on which typewriters were advertised by signs at the front?

A. The only store I noticed was the Smith-Premier, and I went in there to inquire for the price of one of their typewriters.

xQ. 41. Did you ask there for the address of the Remington typewriter?

A. No, sir.

Cross Examination closed.

Deposition closed.

383 Complainant's counsel offers in evidence a letter and envelope, which letter and envelope were identified by Mr. Frank L. Sholes on cross-examination, and the circumstances attending it proven by him. Said letter and envelope are filed in evidence and marked "Complainant's Exhibit Chester News Letter and Envelope, S. C. O., Spec. Exr., Jan'y 5, 1901".

Defendant's counsel objects to the introduction in evidence of the letter and envelope above mentioned, as immaterial, irrelevant and incompetent, as not being properly proven, and as not being proper rebuttal testi-
384 mony, and counsel gives notice that he will move the Court at the proper time to suppress the said exhibits.

UNITED STATE[S] OF AMERICA,
Southern Dist[rict] of New York,
City and Coun[ty] of New York. } ss.

I, SIDNEY C. [illegible]Y, a Notary Public in and for the County [illegible]gs, State of New York, my certificate be[ing] file in New York County, acting as Spe[cial] Examiner by consent of counsel, do hereby certify that the foregoing depositions of John F. McClain, George J. Wallau, George

Theodore Newton and Robert McKean Jones, 385
witnesses on behalf of the complainant, were taken before me by Miss M. J. Snowden, an expert typewriter, at the office of H. D. Donnelly, Esq., No. 280 Broadway, New York City, on Friday, January 4, 1901, between the hours of 10 a.m. and 5 p.m.

I further certify that I am not of counsel nor attorney for either of the parties, nor in anywise interested in the event of the said cause.

I further certify that H. D. Donnelly, Esq. appeared on the part of the complainant, and George P. Fisher, Jr. Esq., appeared on the part of the defendant in the taking of said depositions.

I further certify that during the taking of the 386
said depositions the following exhibits were introduced in evidence:

Complainant's Exhibit Photographs Nos. 1 and 2, Remington-Sholes Retrospective Exhibit at Paris Exposition, S. C. O., Sp'l Exr. Jan'y 4, 1901.

Complainant's Exhibit La Machine a Ecrire, S. C. O., Spec. Exr. Jan'y 4, 1901.

Complainant's Phillips Exhibit Rem-Sho Typewriter, S. C. O. Spec. Exr. Jan'y 4, 1901.

Complainant's Exhibit Phillips Letter, S. C. O., Spec. Exr. Jan'y 4, 1901.

Complainant's Exhibit *Schreibmaschinen Zeitung*, October 15, 1900, S. C. O. Spec. Exr., Jan'y 4, 1901. 387

Complainant's Exhibit R. H. Edmunds Co. Envelope & Rem-Sho Booklet S. C. O., Spec. Exr., Jan'y 4, 1901.

SIDNEY C. ORMSBY,

Notary Public, Kings County, New York, Certificate on file in New York County, Special Examiner by Consent.

[SEAL.]

Rev. Stamp.

388 UNITED STATES OF AMERICA,
Southern District of New York, } ss.
City and County of New York.

I, JOHN CALLAHAN, a Notary Public in and for the County of New York, City of New York, acting as Special Examiner by consent of counsel, do hereby certify that the foregoing deposition of Samuel Weingart, a witness on behalf of the complainant, was taken before me by Miss M. J. Snowden, an expert typewriter, at the City of New York on Saturday, January 5, 1901.

I do further certify that I am not of counsel, nor attorney for either of the parties, nor in any wise interested in the event of the said cause.

389 I further certify that H. D. Donnelly, Esq., appeared on the part of complainant, and George P. Fisher, Esq., appeared on the part of defendant in the taking of said deposition.

I further certify that during the taking of the said deposition the following Exhibit was introduced in evidence:

Complainant's Exhibit, Chester News Letter and Envelope, S. C. O. Spec. Exr., Jan. 5, 1901.

JOHN CALLAHAN,

[SEAL.] Notary Public New York County,

Rev. Stamp. Special Examiner by consent.

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UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
City and County of New York.

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I, WILLIAM E. COOK, a Notary Public in and for the County of New York, State of New York, acting as Special Examiner by consent of counsel, do hereby certify that the foregoing depositions of William F. Lewis, a witness for defendant, and John B. Culpepper, a witness for complainant, were taken before me by Miss M. J. Snowden, an expert typewriter, at the office of H. D. Donnelly, Esq., No. 280 Broadway, on Saturday, January 5th, 1901, between the hours of 10 A. M. and 1 P. M.

I do further certify that I am not of counsel, nor attorney for either of the parties, nor in any wise interested in the event of the said cause. 392

I do further certify that H. D. Donnelly, Esq., appeared on the part of the complainant, and George P. Fisher, Jr., Esq., appeared on the part of defendant in taking of said depositions.

I further certify that during the taking of the said depositions the following Exhibit was introduced in evidence:

Complainant's Exhibit, Davis & Rose Letter, S. C. O., Spec. Exr., Jan. 5, 1901.

WM. E. COOK,

[SEAL.] Notary Public New York County,

Rev. Stamp. Special Examiner by consent. 393

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# United States Circuit Court, 1

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

*vs.*

The HOWE SCALE Co. of '86. 2

## Stipulation.

In the above entitled case it is hereby stipulated and agreed as follows between the parties, by their respective attorneys:

*First*—That "The St. Joseph Herald" is a daily newspaper published and circulated at St. Joseph, Mo., and was so being published and circulated on the 30th day of April, 1899; that the copy of the said newspaper, marked for indentification "W. S. & B. vs. Howe Scale Co. of '86, for indentification St. Joseph Sunday Herald, April 30, 1899, L. M. B. Sp. Exr., July 19th, 1899," was published at St. Joseph, Mo., on the day of which it bears the date, to wit: April 30, 1899, in the usual course of business of, and as a part of the regular Sunday edition of the said St. Joseph Herald; that the advertisement on the first page of said copy headed and entitled "Rem-Sho Remington-Sholes Standard Typewriter" was prepared and paid for by and was inserted in 3

said newspaper by the direction and authority of "Diamond Supply Co.," of St. Joseph, Mo.; that said Diamond Supply Co. was at that date and is a dealer at St. Joseph, Mo., in mercandise including typewriting machines of the type known as the Rem-Sho or Remington-Scholes typewriter and was such dealer and was selling or offering for sale the said typewriting machines at the time said advertisement was inserted and published in said newspaper; and that said typewriting machines sold or offered for sale by said Diamond Supply Co. were manufactured for and sold to said Diamond Supply Co. by the Remington-Scholes Co. of Chicago.

*Second.*—That the circular of advertisement of the "Office Inventory & Typewriter Co., Limited," marked for identification "Wyckoff, Seamans & Benedict vs. Howe Scale Co. of '86, Compl't's Ex. Office Inventory and Typewriter Co., Limited, advertisement, Lynden Evans, Notary Public," was printed, issued, and circulated at Copenhagen, Denmark, in the year 1898, by the said company and its representatives, whose names are appended thereto; that the translation annexed to said circular is a true and correct translation thereof; that the said company are dealers for the Kingdom of Denmark in Rem-Sho or Remington-Sholes typewriting machines, and were such dealers at the time of the issuance of said circular, and as such dealers were offering for sale and selling at Copenhagen and other places in Denmark typewriting machines known as the Rem-Sho or Remington-Sholes typewriters; that said machines were manufactured for and sold to said company by the Remington-Sholes Co. of Chicago; that the said Office Inventory & Typewriter Co., Ltd., was at the time said circular was issued and distributed and still is the representative in Denmark of the Remington-Sholes Co. of Germany, a limited liability company organized under the laws of Germany, and of which Henry Newald was the manager, as appears by a letter written for and on behalf of said Remington-Sholes

Co. of Germany and Henry Newald, Manager, 7
dated April 20, 1899, to one Vilhelm Kondrup, 48
Gothersgade, Copenhagen (said letter being marked
for identification "Wyckoff, Seamans & Benedict
vs. Howe Scale Co. of '86, Compl't's Ex Newald-
Kondrup letter, Lynden Evans, Notary Public");
that the typewriting machines known as the Rem-
Sho or Remington-Sholes typewriters sold or offered
for sale by said Remington-Sholes Co. of Germany,
and its Manager, Henry Newald, and by the Office
Inventory & Typewriter Co., Ltd., of Copenhagen,
Denmark, were made for and sold to said compan-
ies by the Remington-Sholes Co. of Chicago.

*Third.*—That the paper, marked for identifica- 8
tion "Wyckoff. Seamans & Benedict vs. Howe
Scale Co., Compl't's Ex. copy Sholes assignment,
Lynden Evans, Notary Public," is a true and cor-
rect copy of an assignment from Zalmon G. Sholes
and others to Edward A. Wadhams and others,
dated April 8th, 1893, and that said copy may be
filed and used in evidence with the same force and
effect as the original thereof would have, provided
said original be produced by complainant for veri-
fication by the defendant's counsel before the com-
pletion of defendant's proof in this case.

*Fourth.*—That the papers, marked for identifica-
tion "Wyckoff, Seamans & Benedict vs. Howe Scale
Co., Compl't's Ex. Scheumaker letters, Nos. 1, 2, 3, 9
4, 5, 6, 7, 8, 9, 10, 11 and 12, Lynden Evans, Notary
Public," are true and correct copies (Letter No. 7
being an original) of letters that passed between
W. M. Scheumaker of Hartford, Conn., and the
New York City Agency of the Remington-Sholes
Co., and that said copies may be filed and used in
evidence in this case with the same force and effect
as the originals thereof would have.

*Fifth.*—That the copy of the Russian News,
marked for identification "W. S. & B. vs. Howe
Scale Co. of '86, for identification Compl't's Ex.
Remington-Sholes Machine Russian advertisement

10 L. M. B. Sp. Exr. July 19, 1899," was published at Moscow, Russia, on the 30th day of May, 1899, in the usual course of the business of, and as a part of the regular edition of, the Russian News; that said Russian News is a newspaper published and circulated at Moscow, Russia, and was so being published and circulated on the date of said copy; that the advertisement of the Remington-Sholes typewriting machines in said newspaper was inserted or caused to be inserted therein and was paid for by L. E. Hagen, of Moscow, Russia, and that the translation thereof annexed to said newspaper is a true and correct translation of the said advertisement; that
11 the said L. E. Hagen was at the time of said publication and is the exclusive dealer for Russia for the sale of typewriting machines known as the Rem-Sho, or Remington-Sholes typewriters, under an agreement with the Remington-Sholes Co. of Germany, and as such was selling and offering for sale said typewriting machines at the time said advertisement was inserted and published in said newspaper; and that the said typewriting machines so sold or offered for sale by said Hagen were purchased by him from the said Remington-Sholes Co. of Germany, and by the said Remington-Sholes Co. of Germany from the Remington-Sholes Co. of Chicago.

12 *Sixth.*—That the photograph marked for identification "W. S. B. *vs.* Howe Scale Co. of '86, Complainant's Exhibit Franklin Remington envelopes, Lynden Evans, Notary Public," is a true and correct representation and reproduction of two envelopes and of the writing and other marks upon the faces of the same, that were delivered by the mail carrier in the regular course of the mail at the office of Wyckoff, Seamans & Benedict, in the City of Chicago, Illinois, on the 29th day of July, 1899; that said envelopes were returned to said postman or carrier on the same day and were delivered by a letter carrier in the regular course of the mail at the

office of the Remington-Sholes Co. at 127 Rees 13
street, Chicago, Illinois, and were received and accepted by the said Franklin Remington, Manager of said Remington-Sholes Co., as letters addressed to and intended for him.

(Signed) HENRY D. DONNELLY,
Counsel for Complainants.

PIERCE & FISHER,
Solicitors for Defendants.

Chicago, Ill,
October 4, 1899.

14

15

16 UNITED STATES CIRCUIT COURT.

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

*vs.*

HOWE SCALE CO. of '86.

## Stipulation.

In the above-entitled case, it is hereby stipulated
17 by and between the parties hereto, by their respective solicitors, as follows:

*First.*—That the photograph, marked for identification "Wyckoff, Seamans & Benedict *vs.* Howe Scale Co. of '86, Complainant's Exhibit Seigel-Cooper Envelope, Lyndon Evans, Notary Public," is a correct photographic reproduction of an envelope, and of the writing and other marks upon the face of the same, which was delivered in the regular course of mail at the office of Wyckoff, Seamans & Benedict, 144 Madison street, Chicago, Ill., on the 27th day of November, 1899; that said envelope was returned to the postal authorities on the next day and was delivered by said postal authorities on the
18 same day at the office of the Remington-Sholes Co., at 127 Ress street, Chicago, Ill., and was received and accepted by C. N. Fay, the president of said Remington-Sholes Co.

*Second.*—That the photograph, marked for identification "Wyckoff, Seamans & Benedict *vs.* Howe Scale Co, of '86, Complainant's Exhibit Leffingwell Letter and Envelope, Lynden Evans, Notary Public," is a correct photographic reproduction of an envelope and of the writing and other marks upon the face of the same, and of a letter, which were delivered in the regular course of mail at the office of Wyckoff, Seamans & Benedict, 144 Madison

street, Chicago, Ill., on the 6th day of December, 19
1899, said envelope containing said letter; that said envelope was opened by the receiving clerk of said Wyckoff, Seamans & Benedict's Chicago office in the regular course of business; that said envelope and letter on the next day were remailed to the Remington-Sholes Co. at 127 Rees street, Chicago, Ill., by S. W. Crandall, Manager of the Chicago office of Wyckoff, Seamans & Benedict, accompanied by a letter from said Crandall, a copy of which is attached to said photograph and marked "Wyckoff, Seamans & Benedict *vs.* Howe Scale Co. of '86, Complainant's Exhibit, Crandall Letter, Lynden Evans, Notary Public," and were accepted by said 20
company.

*Third.*—That said photographs and said copy of said Crandall letter may be offered and used in evidence in this case, with the same force and effect as the originals thereof would have.

H. D. DONNELLY,
Counsel for Complainant

PIERCE & FISHER,
Solicitors for Defendant.

Dec. 12, 1899.

21

22 UNITED STATES CIRCUIT COURT.

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

*vs.*

HOWE SCALE Co. of '86.

23

## Stipulation.

In order to avoid the taking of further prima facie proof on behalf of complainant, in the above entitled cause, it is hereby stipulated between the parties hereto as follows: Subject, however, to the objection of counsel for defendant that the facts hereinafter stipulated are immaterial and irrelevant for the reason, *inter alia*, that it has not and cannot be proven that the advertisements hereinafter referred to were made or published by authority or sanction of defendant, or of the Remington-Sholes Company or of anyone authorized to act for either of them in such matters, and defendant's counsel
24 gives notice that at or before the hearing of this cause he will move to have such matters stricken from the Record.

1. That a copy of the advertisement and newspaper, marked for identification "Wyckoff, Seamans & Benedict vs. Howe Scale Co. of '86, Complainant's Exhibit, 'Russian Newspaper No. 338,' Lynden Evans, Notary Public," was published at Moscow, in Russia, on the 10th day of December, 1899, in the usual course of business of, and as a part of the regular edition of, the "Russkie Listok," that said Russkie Listok is a newspaper published and circulated at Moscow, Russia, and was so being

published and circulated on the date of said copy; 25
that the advertisement of the Remington-Sholes typewriting machine in said newspaper and entitled "Notice to the honorable public," was inserted or caused to be inserted therein and was paid for by T. I. Hagen of Moscow, Russia; that the translation annexed to said newspaper is a true and correct translation of said advertisement or notice; that the said Hagen had at the time of said publication and now has the exclusive right for the sale in Russia of the typewriting machines known as Rem-Sho or Remington-Sholes typewriters, under an agreement with the Remington-Sholes Co. of Germany, and so was selling and offering for sale said typewriting machines at the time said advertisement or notice 26
was inserted and published in said newspaper; that the said typewriting machines so sold or offered for sale by said Hagen were purchased by him from the said Remington-Sholes Co. of Germany, and by the said Remington-Sholes Co. of Germany from the Remington-Sholes Co. of Chicago, which latter company manufacture all of said machines; that the said advertisement or notice was prepared by said Hagan from an affidavit by Franklin Remington before the American Consul at Moscow, Russia; that said affidavit of said Remington was made for the purpose of publication by said Hagen, but that in said affidavit of said Remington as furnished by him
to said Hagen, clause 1 reads as follows: "1. That 27
I am the son of the original manufacturer of the Remington typewriter;" that said Remington was at the time of said affidavit and is the general manager of the Remington-Sholes Co. of Chicago.

2. That the copy of the advertisement and newspaper, marked for identification "Wyckoff, Seamans & Benedict vs. Howe Scale Co. of '86, Complainant's Exhibit 'Russian News of the Day,' Lynden Evans, Notary Public," was published at Moscow, Russia, on the 29th day of November, 1899, in the usual course of business of, and as a part of the regular edition of the "News of the Day;" that said "News of the

Day" is a newspaper published and circulated at Moscow, in Russia, and was so being published and circulated on the date of said copy; that the advertisement of the Remington-Sholes typewriting machine in said newspaper was inserted, or caused to be inserted therein, and was paid for by T. I. Hagen of Moscow, Russia; that the translation annexed to said newspaper is a true and correct translation of said advertisement; that the said Hagen had at the time of said publication and now has the exclusive right for the sale in Russia of the typewriting machines known as Rem-Sho or Remington-Sholes typewriters, under an agreement with the Remington-Sholes Co. of Germany, and so was selling and offering for sale said typewriting machines at the time said advertisement was inserted and published in said newspaper; the said typewriting machines so sold or offered for sale by said Hagen were purchased by him from the Remington-Sholes Co. of Germany and by said Remington-Sholes Co. of Germany from the Remington-Sholes Co. of Chicago, which latter company manufacture all of said machines.

3. That said translations may be used in evidence in this cause with the same force and effect as the originals thereof would have.

H. D. DONNELLY,
Per J. McROBERTS,
Attorney for Complainant.

PIERCE & FISHER,
Attorneys for Defendant.

Feb. 9, 1900.

11

CIRCUIT COURT OF THE UNITED STATES. 31

FOR THE DISTRICT OF VERMONT.

| | |
|---|---|
| WYCKOFF, SEAMANS & BENEDICT<br>*vs.*<br>The HOWE SCALE Co. of 1886. | IN EQUITY. |

32

## Complainant's Exhibits.

TITLE PAPERS.

### Complainant's Ex-Certificate of Incorporation E. Remington & Sons.

UNITED STATES OF AMERICA.

STATE OF NEW YORK.

by 33

JOHN T. McDONOUGH,

Secretary of State and Custodian of the Great Seal thereof.

IT IS HEREBY CERTIFIED, that J. B. H. Mongin, was, on the day of the date of the annexed Certificate and Attestation, Deputy Secretary of State of the State of New York, and duly authorized by the laws of said State to make such Attestation and Certificate and to perform the duties belonging to the Secretary of State in making such Attestation and Certificate, in like manner as said Secretary of State; that the said Certificate and Attestation are

34 in due form and executed by the proper officer; that the Seal affixed to said Certificate and Attestation is the Seal of office of the Secretary of State of the State of New York, that the signature thereof of the said Deputy Secretary of State, is in his own proper handwriting, and is genuine; and that full faith and credit may and ought to be given to his official acts; and further, that the Secretary of State is the Custodian of the Record of Corporation Certificate so certified and attested, and Custodian of the great Seal of said State, hereto affixed.

In testimony whereof, the great Seal of the State is hereunto affixed.

35 Witness my hand at the City of Albany, the twelfth day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN T. McDONOUGH,

*Secretary of State.*

[SEAL]

(Canceled Revenue Stamp)
(5 cents)

The undersigned desiring to form a Company for carrying on the manufacturing business hereinafter mentioned and to form a corporation for that purpose do hereby in pursuance of the provisions of the Act of the Legislature of the State of New
36 York, entitled "An Act to authorize the formation of Corporations for manufacturing, mechanical and chemical purposes, passed February 17th, 1848," and the acts amending the same certify and declare as follows:

That the name of said Corporation shall be E. Remington & Sons.

That the object for which the said corporation is formed is the manufacture and sale of Fire Arms.

That the Capital Stock of the said Corporation is One Million Dollars.

That the term of the existence of said corporation 37
shall be fifty years from the date hereof.

That the capital stock of the said corporation shall consist of ten thousand shares of one hundred dollars each.

That the number of trustees to manage the concerns of said corporation shall be seven, and the names of the trustees who shall manage the concerns of the said corporation for the first year are Philo Remington, Samuel Remington, Eliphalet Remington, James Sayre, Henry H. Fish, Francis Keman, and Floyd C. Shepard, all citizens of the State of New York.

That the operations of the said corporation are to 38
be carried on at Ilion, in Herkimer County, in the State of New York, and at Utica, in Oneida County, in the State of New York.

In testimony whereof, we whose names are hereunto subscribed have signed duplicate certificates as provided in the aforesaid acts this seventh day of January, one thousand eight hundred and sixty-five.

PHILO REMINGTON. [SEAL]
SAMUEL REMINGTON. [SEAL]
ELIPHALET REMINGTON. [SEAL]

39

40 STATE OF NEW YORK, } ss. (Canceled Rev. Stamp)
HERKIMER COUNTY. } (5 cents)

On this seventh day of January, 1865, personally appeared before me the subscribers Philo Remington, Samuel Remington and Eliphalet Remington, personally known to me to be the same persons who signed the annexed instrument, and severally acknowledged that they executed the same for the purposes therein mentioned.

W. H. THOMAS, *Justice*,
Ilion, N. Y.

(Endorsed)
E. Remington.
41 Jan'y. 7th, 1865. $1,000,000.
Filed January 11th, 1865.

ERASTUS CLARK,
Deputy Secretary of State.

STATE OF NEW YORK, }
OFFICE OF THE SECRETARY OF STATE. } ss.

I have compared the preceding with the original Certificate of Incorporation of E. Remington & Sons,
42 filed and recorded in this office on the eleventh day of January, 1865, and do hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the Seal of Office of the Secretary of State, at the City of Albany this sixth day of January, one thousand eight hundred and ninety-nine.

J. B. H. MONGIN,
Deputy Secretary of State.

[SEAL]

**Complts. Ex. Remington Densmore Sholes & Yost Original Contract.**

This memorandum of agreement, made this 28th day of February, 1873, by and between E. Remington & Sons, of Ilion, New York, of the first part, and James Densmore, of Meadville, and G. W. N. Yost, of Gorry, both of Pennsylvania, of the Second part, Witnesseth, That

Whereas, Letters Patent of the United States have been granted to C. Latham Sholes, Carlos Glidden, and Samuel W. Soule, bearing date, respectively, June 23rd, and July 14th, 1868, for improvements in typewriting machines, and to C. Latham Sholes, bearing date August 29th, 1871, for improvements in mechanical typographers, and which patents are numbered, respectively, 79265, 79868 and 118491; and

Whereas, said Letters Patent have been assigned to C. Latham Sholes and James Densmore; and

Whereas, said Sholes and Glidden have applications for patents now made and pending before, and to be made to, the United States Patent Office, for other improvements in typewriting machines and mechanical typographers, the beneficial interest in and to which has been assigned to said Sholes and Densmore; and

Whereas, the said Densmore has associated the said Yost with himself in the business of getting made, introducing, and selling typewriters, the instruments or machines of said inventions and patents; and

Whereas, it is desired that said E. Remington & Sons manufacture the said typewriters; now

Therefore, the parties hereto, for and in consideration of one dollar, by each to the other paid, the payment and receipt of which are hereby acknowledged, have agreed as follows:

The parties of the first part are to make, with reasonable dispatch, three sample machines or typewriters, similar, in principle, to the one now exhib-

ited to them by the parties of the second part, but with such alterations, as to details and style, as the superintendent of the parties of the first part and the said Densmore shall suggest and determine.

The parties of the second part are to furnish, free of charge, to the parties of the first part, such material and parts, adapted to be used in making the said three sample machines, as the said parties of the second part now have on hand, and shall pay to the said parties of the first part eighty dollars each for said sample machines; and in case this agreement is not carried out so far as the making and paying for one thousand typewriters is concerned, the parties of the second part shall pay the parties of the first part for the cost of the patterns for the said three sample machines.

The parties of the second part, within thirty days after the said three sample typewriters are finished and ready for delivery, provided the same shall be adopted as Standard machines, shall give an order to the parties of the first part for two hundred and fifty typewriters, similar to said standard sample machines, and shall pay for the same at the time of giving the order, at the rate of forty dollars each, the same to be securely and properly boxed and delivered on board cars or boats, as directed, at Ilion, without charge for boxing, carting, or shipping.

The parties of the second part, within reasonable time thereafter, not to exceed three months after the first order, shall order two hundred and fifty more of said typewriters, on the same terms and conditions; and thereafter, on the same terms and conditions, and within the same recurring periods of time, the said parties of the second part shall order of the parties of the first part, and shall continue to order and take the said typewriters, in lots of two hundred and fifty at a time, till one thousand have been made, taken, and paid for, the whole one thousand to be made and paid for within one year from the date of the first order for two hundred and fifty typewriters.

The parties of the first part shall make the said one thousand typewriters, in lots of two hundred and fifty each, promptly and with reasonable dispatch, and of first-class material, style, and workmanship, and deliver the same, properly and securely boxed and billed, on board cars or boats, at Ilion, as may be directed, at forty dollars each.

The parties of the first part, thereafter, shall make typewriters, and fill all orders for the same, for and from the parties of the second part, promptly and as fast as desired, within reasonable time in lots of five hundred each, to the extent of fifteen hundred in all after the first one thousand, and box and ship and deliver the same, on cars or boats, at Ilion, as directed, at the same price of forty dollars each.

The parties of the first part, then and thereafter, on the order of the parties of the second part, shall make said typewriters promptly and as fast as desired, within reasonable time, of the same first-class material, style, and workmanship, and to work properly and according to the standard, and securely box and ship and deliver the same, on board cars or boats, as directed, at Ilion, at thirty-five dollars each, to the extent of twenty-five hundred typewriters, the same to be ordered in lots of not less than one thousand at a time.

The parties of the first part, then and thereafter, on the order of the parties of the second part, in lots of at least one thousand each, shall make said typewriters, of said first-class material, style and workmanship, and to work properly and according to the standard, and ship and deliver the same, as directed, on board cars or boats, at Ilion, properly boxed and billed, at the net cost of the material used in the said machines and of the labor of making the same, and the addition of sixty *per centum* to such net cost of the material used in and the labor on each machine, for all expenses and profits, over such net cost of material and labor, all of which not to exceed thirty-

52 five dollars for each typewriter so made and delivered.

The parties of the second part hereby grant, assign, and convey to the parties of the first part the exclusive right to manufacture said typewriters under said inventions and patents, and all other patents granted to or controlled by said parties of the second part, to the extent of twenty-five thousand, according to the terms of this agreement; *provided*, the said parties of the first part shall make and deliver the same as fast as ordered, on reasonable notice, or within reasonable time.

The parties of the second part shall furnish to the parties of the first part, within thirty days of
53 the date hereof, or within reasonable time thereafter, but on or before the first three sample machines are finished, the written consent of the said C. Latham Sholes, to this agreement, so far as the exclusive right to manufacture the said twenty-five thousand of said typewriters, under the same, is concerned, and shall save harmless and defend the said parties of the first part against all claims for royalties or damages for infringing any other inventions or patents.

It is understood by and between the parties, that on or before the ordering and paying for the first two hundred and fifty typewriters, the parties of the second part shall furnish to the parties of the
54 first part satisfactory evidence that the parties of the second part, or either of them, own or owns and controls said patents, and that the parties of the first part can manufacture the machines herein contemplated, under said inventions and patents, safely, so as to be entirely free from royalties and liabilities to any other patents.

And it is further understood by the parties that, at the ordering of any lot of said typewriters, as herein provided, for any changes in said typewriters, which the parties of the second part may desire, shall be made at the expense of the said parties of the second part.

And it is farther understood, by and between the parties, that the price for extra-finished machines shall be from time to time agreed upon. 55

And it is farther understood, by and between the parties, that for all the typewriters, to be made as herein provided for, subsequently to the first one thousand specified, the conditions and terms of payment shall, in all cases, be made satisfactory to the parties of the first part.

As witness the hands of the parties, the day and year first hereinbefore written.

E. REMINGTON & SONS,
M. C. SQUIRE, Secretary.
JAMES DENSMORE,
G. W. N. YOST. 56

In presence of
S. S. WESTCOTT,
A. R. BROOKS.
[SEAL.]

Know all men by these presents, that I, the within mentioned C. Latham Sholes, for and in consideration of one dollar to me in hand paid by E Remington & Sons of Ilion, N. Y., the receipt of which is hereby confessed and acknowledged, hereby grant, assign and convey to the said E. Remington & Sons, the exclusive right to manufacture typewriters as within mentioned under the inventions and patents within mentioned, and all other patents granted to or controlled by me in whole or in part to the number of twenty-five thousand typewriters. 57

And I hereby for the consideration aforesaid, consent to the within agreement, so far as the exclusive right to manufacture the said twenty-five thousand typewriters is concerned.

Given under my hand and seal this 6th day of November, 1873.

In presence of C. LATHAM SHOLES.
[SEAL.]

58

**Complainant's Ex, Certificate of Incorporation of the Typewriter Co.**

UNITED STATES OF AMERICA.

STATE OF NEW YORK.

by

JOHN T. McDONOUGH,

Secretary of State and custodian of the great seal thereof.

It is hereby certified, that J. B. H. Mongin was, on the day of the date of the annexed Certificate and Attestation, Deputy Secretary of State of the
59 State of New York, and duly authorized by the laws of said State to make such Attestation and Certificate, and to perform the duties belonging to the Secretary of State in making such Attestation and Certificate, in like manner as said Secretary of State; that the said Certificate and Attestation are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attestation is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State is in his own proper handwriting, and is genuine; and that full faith and credit may and ought to be given to his official acts; and further, that the Secretary of
60 State is the Custodian of the Record of Corporation Certificate, so certified and attested, and Custodian of the Great Seal of said State, hereto affixed.

In testimony whereof, the great seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the twelfth day of January, in the year of our Lord, One thousand eight hundred and ninety-nine.

JOHN T. McDONOUGH,
Secretary of State.

[SEAL.]

THE TYPEWRITER COMPANY. 61

STATE OF NEW YORK,
City of New York,
and County of New York. } ss.

We, John E. Barber and Emmett Densmore, of the City of New York, and Amos Densmore, of the City of Meadville, and State of Pennsylvania, do by these presents, pursuant to and in conformity with the Act of the Legislature of the State of New York, passed on the seventeenth day of February, one thousand eight hundred and forty-eight, entitled "An Act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," and the several Acts of the 62
said Legislature amendatory thereof, associate ourselves together and form a corporation, under the name and style of "The Typewriter Company." and the following are hereby declared to be

The corporate name of the said company.

The objects for which the company is formed.

The amount of the capital stock of the said company.

The term of existence of the said company.

The number of shares of which the capital stock of the said company shall consist.

The number of its trustees and the names of those who shall manage the concerns of the said company for the first year. 63

The names of the town and county in which the principal part of the business of the said company, within this State, is to be transacted.

1. The corporate name of the said company is hereby declared to be "The Typewriter Company."

2. The objects for which the said corporation is formed are as follows:

To procure and own inventions and patents of Typewriting Machines, to procure and loan licenses to use inventions and patents of Typewriting Machines, and to make and sell Typewriters, or ma-

chines of said inventions and patents, throughout the United States and the world.

3. The capital stock of the said corporation shall be Two hundred and fifty thousand dollars, which shall be divided into two thousand five hundred shares of One hundred dollars each.

4. The said corporation shall commence on the first day of January, in the year one thousand eight hundred and seventy-five, and shall continue in existence for the term of fifty years.

5. The number of trustees who shall manage the concerns of the said corporation shall be three, and their names are John E. Barber, Amos Densmore, and Emmett Densmore, and the names of such trustees for the first year are John E. Barber, Amos Densmore and Emmett Densmore.

6. The name of the city and county in which the operations are to be carried on in the State of New York.

The main office and principal place of business shall be in the City of New York, but it may have branch offices in all the chief towns and cities of the United States.

Witness our hands and seals, this twenty-eighth day of December, 1874.

JOHN E. BARBER,
AMOS DENSMORE,
EMMETT DENSMORE.

STATE OF NEW YORK,
City of New York
and County of New York. } ss. 67

On the 4th day of January, in the year one thousand eight hundred and seventy-five, before me personally came John E. Barber, Amos Densmore and Emmett Densmore, the persons named in the foregoing certificate, and to me known to be the individuals described in and who executed the foregoing instrument and severally acknowledged that they executed the same.

WM. H. RIBLET,
[Seal.] Notary Public,
Third Ave., cor 9th Street, New York. 68

(Endorsed.)

Certificate of Incorporation
of
The Typewriter Company,
Filed the fifth day of February, 1875.
DIEDRICH WILLERS, JR.,
Secretary of State.

STATE OF NEW YORK,
Office of the Secretary of State. } ss.

I have compared the preceding with the original 69
certificate of incorporation of The Typewriter Company, filed and recorded in this office on the fifth day of February, 1875, and do hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of January, one thousand eight hundred and ninety-nine

J. B. H. MONGIN,
Deputy Secretary of State.

[Seal.]

70 **Complainant's Ex. Assignment of Sholes to Densmore and Yost.**

**ASSIGNMENT.**

Whereas, C. Latham Sholes, Samuel W. Soule, Carlos Glidden, Matthias Schwalbach and others have invented a machine to write with types, instead of the pen, which machine is called the TYPEWRITER; and

Whereas, patent 79,265, June 23, 1868, and patent 79,868, July 14, 1868, were issued to said Sholes, Glidden & Soule, for devices of said invention; and

Whereas, patent 118,491, August 29, 1871, was
71 issued to said Sholes for devices of said invention; and

Whereas, a joint application by said Sholes and Schwalbach was filed, March 30, 1872, for a patent for devices of said invention; and

Whereas, a joint application by said Sholes & Schalbach was also filed in January, 1874, for a patent for devices of said invention; and

Whereas, a joint application by said Sholes and Glidden was also filed in January, 1874, for a patent for devices of said invention; and

Whereas, other applications by said Sholes are hereafter to be filed for patents for devices of said invention; and

72 Whereas, an undivided one-fourth interest in said invention and patents and applications for patents was assigned to James Densmore; and

Whereas, said James Densmore furnished money to pay for experiments in developing improved devices of said invention for said applications for patents; and

Whereas, by assignment and agreement, made November 16, 1872, by said Sholes & Glidden and Densmore, said invention and patents and applications for patents were made a trust, and assigned to said Sholes and Densmore, as trustees, for the benefit and use as follows: One-tenth each to Amos

Densmore and Emmett Densmore, brothers of said 73
James Densmore, and one-tenth to Mrs. Phœba J. Glidden, wife of said Carlos Glidden, and three-tenths to said Sholes, and four-tenths to said James Densmore; and

Whereas, said James Densmore wished to invest services and money, and engage in the business of making and getting made and selling typewriters, or machines of said invention; and

Whereas, said Sholes and Glidden did not wish to engage in, nor in any manner become interested in said business, other than to receive compensation for the use of said invention and patents and applications for patents; and

Whereas, said James Densmore, therefore, with 74
the consent of said Sholes, determined to separate said typewriter enterprise into two divisions—the first to comprise the business of perfecting said invention and protecting it with all obtainable patents thereon, and paying expenses therefor, and collecting said compensation for said use thereof, and the second to comprise said business of making and getting made and selling said typewriters and the basis of paying said compensation for said use of said invention and patents and applications for patents; and

Whereas, with the consent of said Sholes, said James Densmore assumed control and management of said second division of said typewriter, general 75
enterprise,—namely, said business of making and getting made and selling said typewriters on said basis of paying said compensation for said use of said invention and patents and applications for patents; and

Whereas, with the consent of said Sholes, said James Densmore associated George W. N. Yost with himself in said business, on said basis, in the firm name of Densmore & Yost; and

Whereas, with the consent of said Sholes, said Densmore & Yost have associated said Amos

Densmore with themselves in said business, in the firm name of Densmore, Yost & Co.; and

Whereas, said Densmore & Yost wish to buy and obtain all of said interests of said invention and patents and applications for patents not now held and owned by any member of said firm of Densmore, Yost & Co.; and

Whereas, said Sholes has sold and assigned to said Amos Densmore an undivided one-twentieth interest in said invention and patents and applications for patents; and

Whereas, said Sholes also has sold and assigned to D. C. Roundy an undivided one-twentieth interest in said invention and patents and applications for patents; and

Whereas, said Sholes also has sold and assigned to Henry E. Sherman an undivided one-fortieth interest in said invention and patents and applications for patents; and

Whereas, said Sholes also wishes to sell all of his remaining interest in said invention and patents and applications for patents, excepting an undivided one-tenth thereof and to fix and determine said compensation for said use of said one-tenth thereof; now,

Therefore, said C. Latham Sholes, party of the first part, and said James Densmore and George W. N. Yost, parties of the second part, have made an agreement as follows:

1. In consideration of ten thousand dollars in hand paid, said party of the first part hereby assigns to said party of the second part all of said remaining interest of said party of the first part in and to said invention and patents and applications for patents, excepting an undivided one-tenth thereof.

2. For the same consideration and for the farther consideration of the stipulations hereinafter, said party of the first part hereby also assigns to said party of the second part the exclusive right, to use, control, and manage said remaining one-tenth in-

terest of said party of the first part in said invention 79
and patents and applications for patents, during the terms of any of said patents, on condition that said party of the second part shall pay to said party of the first part and to his heirs and assigns one *per centum* of the regularly established retail price, not to exceed one dollar for each and every said typewriter made and sold for use in the United States, and one-half said sum for each and every said typewriter made in said United States and sold for use in any foreign country, for said use of said one-tenth interest in said invention and patents and applications for patents.

2. And in consideration of said foregoing assign- 80
ment of all of said remaining interest of said party of the first part in and to said invention and patents, and applications for patents, excepting said undivided one-tenth thereof, and of said assignment of said exclusive right to use, control and manage said reserved one-tenth thereof, during said terms of said patents, said party of the second part hereby agree to pay to said party of the first part and to his heirs and assigns, for said use of said reserved one-tenth thereof, one *per centum* of said regularly established retail price not to exceed one dollar for each and every said typewriter made and sold for use in said United States, and one-half said sum for each and every said typewriter made and sold 81
for use in any foreign country.

3. And for the same considerations, said party of the second part hereby farther agree to keep a faithful and accurate account of all of said typewriters made and sold in said United States and to make a statement and report thereof to said party of the first part and heirs and assigns, and to pay said fees or "royalties" on the first of January and first of July of each and every year.

4. Said account of said typewriters so made and sold shall at all times be open to the inspection of said party of the first part and heirs and assigns.

82 5. This agreement shall begin and take effect from and after the first day of March, eighteen hundred and seventy-three, and shall continue during said term of any of said patents.

DONE September 1, 1874.

C. LATHAM SHOLES,
JAMES DENSMORE,
G. W. N. YOST.

In part consideration of nine hundred and fifty shares of the full property capital stock of the Typewriter Company, a corporation of the State of New York, we hereby assign to said company, and to its successors and assigns, all our right, title and
83 interest in and to the foregoing assignment by said C. Latham Sholes to us of the interests in certain inventions and patents and applications for patents therein described and set forth.

DONE this January sixth, eighteen hundred and seventy-five.

JAMES DENSMORE,
G. W. N. YOST.

ADDENDA.—It is hereby understood that in case said Typewriter Company shall fail to make said reports agreed to be made in the within or hereinbefore agreement and assignment, and shall refuse
84 or neglect to pay said fees or "royalties" therein agreed to be paid, for a period of six months, then and in that case, said Sholes, at his own option may resume the control and management of said one-tenth undivided interest in said inventions and patents and applications for patents, the same as if this agreement had not been made.

DONE this January sixth, eighteen hundred and seventy-five.

THE TYPEWRITER COMPANY,
AMOS DENSMORE, President.

**Complainant's Ex. Typewriter—Remington Contract of Nov. 1, 1875.** 85

This agreement made and entered into the first day of November, A. D., 1875, by and between E. Remington & Sons, of Ilion, in the State of New York, of the first part, and the "The Typewriter Company," of the City and State of New York, of the second part, witnesseth:

I. That the party of the first part, for and in consideration of the covenants and agreements herein contained by and in behalf of the party of the second part, hereby covenants and agrees, to manufacture in a skillful, tasteful, and substantial manner, typewriting machines, under such patents as 86
are or may be owned and controlled by the party of the second part, upon such plan as shall, from time to time, be duly approved in writing by both the parties hereto, and in numbers sufficient to supply fully the market demand therefor, to employ agents and use due diligence generally to introduce and sell the machine so manufactured and maintain and increase their sale throughout the United States and in such foreign countries as patents thereon may be obtained, or in which there may be a sufficient demand for the machine as to justify the establishment of agencies for their sale; to keep systematic and true accounts of all said 87
typewriting machines which they shall distribute for sale and of all which they shall sell, and to hold such accounts at all reasonable times, subject to the examination of the party of the second part, or their duly authorized agents; to render to the second party an account for each month of all machines sold, stating the places of sale, during the month, and to render quarterly, when required by the party of the second part, an account of all machines distributed or sent away from their manufactory, but not sold, stating where the same are held; and to pay monthly to the party of the second part a royalty or fee of fifteen dollars on each ma-

chine sold during the month, such accounts of monthly sales and such payments to be made, in respect to the machines for each month, on or before the twentieth day of the month next succeeding.

II. That the party of the second part for and in consideration of the covenants and agreements herein contained by and in behalf of the party of the first part, hereby covenants and agrees to give to the party of the first part the exclusive right to manufacture and sell typewriting machines under the patents which are or may be owned and controlled by them in the United States and all other countries; to pay out of the royalties, or fees received as aforesaid, such sums as may be required to satisfy any and all judgments for damages that may be decreed against the party of the first part, for the infringement of any patent by the manufacture and sale of machines under this agreement; and to bring suit in their own name, or to authorize and permit the party of the first part to bring suit against other persons who shall infringe said patents or any of them, by the manufacture or sale of typewriting machines, the expense of such suits, in whichever name brought, to be contributed in equal proportions by the parties hereto and the sums recovered to be equally divided between them.

III. That it is mutually agreed by and between the parties hereto, that the term of this agreement shall begin on the date hereof and shall continue until the expiration of the patents aforesaid.

DONE this first day of November, A. D. 1875.

E. REMINGTON & SONS,
W. C. SQUIRE, Sec'y.

Witnesses for E. Remington & Sons:
W. H. BARRY,
H. H. BENEDICT.

THE TYPEWRITER COMPANY,
AMOS DENSMORE, President.

It is furthermore mutually agreed that neither 91
party to this agreement shall be required to contribute toward the expense of any suit for infringement commenced without mutual consent, but in case either party chooses to sue after having solicited and failed to obtain the consent of the other, then the party sueing will be entitled to any damages obtained in such suit.

E. REMINGTON & SONS,
W. C. SQUIRE, Sec'y.

Witnesses: W. H. BARRY,
H. H. BENEDICT.

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## Complainant's Ex. Yost Letter, May 15, 1875.

NEW YORK, May 15, 1875.

B. A. BROOKS—

DEAR SIR: I will give you 5,000 payable monthly at the rate of one thousand dollars per year for five years, commencing July 1st in and for your improvements in upper and lower case machines wherein two letters or characters are put on one type bar 93
and worked by one key. It being understood that I am to furnish all the money required to secure the necessary patents and to fully develop the said inventions, you to sign all papers necessary to fully secure the patents for said improvements and assign all patents obtained to me when the ($5,000) five thousand dollars is all paid, I am to have your entire interest in the said inventions for this and other countries.

Respectfully yours,
G. W. N. YOST.

**Complainant's Ex. Yost Agreements of Oct. 28, 1878, No. 1 and 2.**

For and in consideration of one dollar and other valuable considerations to me in hand paid by the Typewriter Company and by E. Remington & Sons, I hereby sell, assign, transfer and set over to said The Typewriter Company all my right, title and interest, of, in and to any and all patents, now issued and such as may hereafter be at any time issued applicable to the typewriter as now manufactured so as it may be hereafter manufactured by E. Remington & Sons, their successors and assigns, which I now own or control or which I may hereafter own
95 or control in whole, or in part during such time as I shall be interested in the Typewriter Company, and all inventions and improvements in that behalf to the end and with the purpose and intent, and such right is hereby conferred that the said E. Remington & Sons, their successors and assigns may and shall have the right to manufacture under their present agreement with the Typewriter Company or otherwise, such typewriters containing all or any such inventions and improvements whether covered and secured by any existing patents or to the hereafter patented for and at the same rate of royalty as they are now liable to pay by existing agreements and no more.

96 And I further agree that I will at any time at the request of the said Typewriter Company, or the said E. Remington & Sons further assurance in the premises make, so as fully to effectuate the intents and purposes of these presents.

In witness whereof, I have hereunto set my hand and seal this 28th day of October, 1878.

G. W. N. YOST.

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## Memorandum of Agreement.

For a good and valuable consideration, and in consideration of one dollar in hand paid, the receipt of which is herewith acknowledged, I have agreed and hereby agree and guarantee to make any and every necessary assignment and direction in writing to give to the Typewriter Company, and to E. Remington & Sons, by, under and through said The Typewriter Company, a full, perfect and complete right and title to the use of any and all improvements in typewriting machines, as now developed in the "upper case" and "lower case" typewriter, otherwise called the "No. Two" typewriter, and also as developed in the improved machine called 98
the "No. Four" typewriter, and to the exclusive right to make and sell said improved typewriters without any additional fee or royalty for such manufacture and sale than such as have already been agreed to be paid.

G. W. N. YOST.

New York, Oct. 28th, 1878.

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## Complainant's Ex. Sholes Agreement as to Royalty of Aug. 15, 1878.

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## Agreement.

Whereas, An agreement was made, January 6th, 1875, by and between The Typewriter Company, a corporation under the laws of the State of New York, organized on said January 6, 1875, with its principal place of business in the City of New York, and C. Latham Sholes, of Milwaukee, Wisconsin, and James Densmore, of Meadville, Pennsylvania, whereby said Sholes and Densmore assigned to said The Typewriter Company, successors and assigns, the exclusive right to make and sell typewriting machines, under certain inventions and

patents therein specified, and whereby said Company promised to pay a certain fee for every said machine made and sold, and

Whereas, By assignments from said Sholes, patents No. 182,511, September 19, 1876, to said Sholes and Matthias Schwalbach, No. 199,382, January 22, 1878, to said Sholes, and No. 209,351, February 12, 1878, to said Sholes and Carlos Glidden, for improvements in typewriting machines, were issued to said company; patents allowed and ordered to issue on applications filed March 8, 1875, March 27, 1878, and April 19, 1878, by said Sholes, for improvements in typewriting machines, are directed to be issued to said company; and all the right, title and interest of said Sholes in and to patents No. 79,868, July 14, 1868, to said Sholes and Glidden and Samuel W. Soule, and No. 118,491, August 29, 1871, to said Sholes, for improvements in typewriting machines, has been assigned to said company; and

Whereas, By agreements with said Sholes and Densmore, and with said Densmore and George W. N. Yost, said company promised to pay to said Sholes, heirs and assigns, a certain fee for every said machine made and sold, and also to pay certain promissory notes, nine in number, for one thousand dollars each, made by said Densmore and Yost, September 1, 1874, and payable, with interest from July 1, 1874, to the order of said Sholes; and

Whereas, Said Sholes desires, direct from said company, a more specific obligation for said fee for every said machine made and sold, and a renewed and more specific guaranty for the payment of said notes; and

Whereas, Said company desires to be able to perfect said patents, if at any time any defect should be discovered in any thereof; now

Therefore, Said The Typewriter Company, in consideration hereof, and of said agreements and assignments, as herein specified, hereby promises to pay to said Sholes, heirs and assigns, said promis-

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sory notes, and to make and renew thereon its 103
formal guaranty of payment thereof.

And said The Typewriter Company hereby also promises to pay to said C. Latham Sholes, heirs and assigns, during the term hereof, one dollar for every typewriting machine made and sold under the authority of any of the patents herein specified, from and after July first, eighteen hundred hundred and seventy-eight, to be paid quarterly, on the first of January, April, July and October, of every year, or said Sholes, heirs and assigns, at any time, shall have the option of an order from said The Typewriter Company, on the manufacturers of said machines, directing payment of said fee to said parties, as often and whenever any moneys shall be 104
due, and payable by said manufacturers to said Company on account of the manufacture and sale of said machines; and said fee of one dollar each for every said machine made and sold under the authority hereof shall be a lien on each and every patent herein specified, during the term thereof, and against said manufacturers, whoever and wherever the same may be.

And also in consideration hereof, said Sholes hereby agrees that this shall supersede and take the place of all previous agreements in relation to said fee for every said machine made and sold.

And said Sholes hereby also agrees to sign any 105
papers necessary for the reissue of any of said patents herein specified, whenever presented to him for that purpose.

The term of this agreement shall begin July first, eighteen hundred and seventy-eight, and shall continue during the term of any of said patents herein specified.

Done, this August fifteenth, eighteen hundred and seventy-eight.

THE TYPEWRITER COMPANY.

WM. COMES, President,

E. DENNING LUXTON, Secretary,

C. LATHAM SHOLES. (L. S.)

[SEAL.]

106 **Complainant's Ex. Typewriter License.**
**June 13, 1881.**

Received for record, June 27, 1881, and recorded in Liber Y 26, page 199, of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

E. M. MARBLE,
[SEAL] Commissioner.

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## AGREEMENT OF LICENSE.

Whereas, an agreement was made, November 1st, 1875, by and between the Typewriter Company, a Corporation under the laws of the State of New York, and E. Remington & Sons, also a Corporation under said laws of said State of New York, whereby the former granted to the latter the exclusive right to make and sell typewriting machines under the authority of its patents for improvements therein, and whereby the latter agreed to make and sell said machines and supply all demands for the same, and to pay the former a fee or royalty of fifteen dollars
108 each for every one so made and sold; and

Whereas, Said The Typewriter Company became indebted in a large amount to divers creditors for the purchase of certain other inventions and patents for improvements in typewriting machines, and in liquidation thereof made and delivered to said Creditors one hundred bonds, of $500 each, October 1st, 1878, payable, with interest, seven years after date, and secured the payment thereof by an assignment of all its patents, franchises, rights, royalties, and assets of whatever nature or character, to James Densmore, a stockholder in said Company, as Trustee, by Deed of Trust, dated October 5th,

1878, and recorded November 22nd, 1878, in Liber N 23, page 168, of Transfers of Patents; and 109

Whereas, Previously thereto, George W. N. Yost, also a stockholder of said The Typewriter Company, became indebted to said E. Remington & Sons, in the sum of $50,000 to $60,000, and as collateral security for the payment thereof, assigned to them 1249 shares of the capital stock of said Company; and

Whereas, Said E. Remington & Sons, allege and hold that said indebtedness of said Yost was incurred in behalf and for the benefit of said The Typewriter Company, and that said Company is lawfully responsible therefor, but which said Company and said James Densmore, said Trustee, dispute and deny; and 110

Whereas, said Yost has devised a modified form of typewriting machine, which he claims embodies certain new and valuable improvements, which he calls the "Yost" or "Caligraph" typewriter, and desired to establish a new and separate enterprise for the manufacture and sale thereof, and for that purpose procured the incorporation and organization of the American Writing Machine Company, under said laws of said State of New York; and

Whereas, Said Densmore, said Trustee, entered on and assumed possession and control of said patents, franchises, rights, royalties, and assets of said Trust, and granted to said Yost, January 12th, 1880, to be by him assigned to said American Writing Machine Company, a license for the use of certain specific devices of said patents of said The Typewriter Company and said Trust, in said manufacture and sale of said "Yost" or "Caligraph" typewriting machines; and 111

Whereas, Said E. Remington & Sons hold that they have been wronged by said license from said Densmore, Trustee,—that the powers of said Trust were transcended thereby,—that said powers of said

112 Trust are subordinate to their prior rights,—that they have the legal power to compel the abrogation of said license—and that their prior rights have not been and cannot be affected thereby; and

Whereas, Said Densmore, said Trustee, holds said Deed of Trust to be a lawful muniment,—that it has all the force it purports to have,—that all its provisions can be enforced,—that in behalf of said Trust he can give good and sufficient title to any of said patents, franchises, rights, royalties, and assets,—that said E. Remington & Sons assented to said bonds and Deed of Trust, and waived and abandoned whatever prior rights they may have
113 had,—and that said license is good and tenable; and

Whereas, Said The Typewriter Company is indebted to said E. Remington & Sons in an unliquidated amount,—the latter claim $9,000, while the former deny that it is that amount; and

Whereas, Said The Typewriter Company and said James Densmore, said Trustee, and said E. Remington & Sons desire to settle all differences amicably and avoid litigation; now

Therefore, For and in consideration hereof, and of one dollar by each to the other paid, the receipt whereof is hereby acknowledged, said The Typewriter Company and said James Densmore, as said
114 Trustee, party of the first part, and said E. Remington & Sons, party of the second part, have made and hereby make an agreement of settlement and license, as follows:—

1st. That said indebtedness of said Yost to said party of the second part is hereby liquidated at $50,000, as of January 1st, 1880, and shall not bear interest from and after that date, and said party of the first part hereby assumes and guarantees payment thereof, as herein provided; and that said indebtedness of said party of the first part to said party of the second part is hereby liquidated at $9,000, as of said January 1st, 1880, and shall not

bear interest from and after that date, which shall 115
be paid as herein provided; and all of which make a gross indebtedness of said party of the first to said party of the second part of $59,000, to be paid without interest, as herein provided.

2d. That said party of the first part hereby grants and licenses to said party of the second part, and to their successors, the sole and exclusive right to use, in the manufacture and sale of typewriting machines, said inventions and patents for improvements in typewriting machines, which are Letters Patent of the United States, issued to the following-named persons, and bearing dates and numbers as described and enumerated in said Deed of 116
Trust, as follows, namely :—No. 79,868, July 14, 1868, to C. Latham Scholes, Carlos, Glidden, and Samuel W. Soule; No. 118,491, August 29, 1871, to C. Latham Sholes; No. 182,511, September 19, 1876, to C. Latham Sholes and Matthias Schwalbach; No. 191,382, May 29, 1877, to Charles H. Stanton; No. 199,263, January 15, 1878, to Jefferson M. Clough and William K. Jenne; No. 199,382, January 22, 1878, to C. Latham Sholes; No. 199,494, January 22, 1878, to Walter J. Barron; No. 200,351, February 12, 1878, to C. Latham Sholes and Carlos Glidden; No. 207,002, August 13, 1878, to Ernest R. Barron; No. 207,557, August 27, 1878, to C. Latham Sholes; No. 207,558, August 27, 1878, to C. 117
Latham Sholes; and No. 207,559, August 27, 1878, to C. Latham Sholes;—excepting said agreement of license to said Yost and said American Writing Machine Company, of said January 12, 1880.

3rd.—That said party of the first part hereby grants and licenses to said party of the second part, and to their successors, the sole and exclusive right to use, in said manufacture and sale of typewriting machines, any and all other inventions and patents for improvements in typewriting machines now granted or which hereafter may be granted to, or may be owned or controlled by said party of the

first part, whether of the United States or any foreign country.

4th.—That said party of the second part shall prosecute said manufacture and sale of said typewriting machines with diligence and energy; shall make said machines in the best known style with the best attainable skilled wormanship, of the best obtainable materials, and at the lowest practicable cost; shall make constant effort for the better improvement, development and perfection of the same, both in style and manufacture; shall make all reasonable efforts to ascertain, develop and adopt the best devices of said patents for the same; shall make all practicable efforts to create and extend the market for the same; and shall make the same in sufficient numbers to supply all demands, and to reduce said cost of manufacture to the lowest practicable amount.

5th.—That said party of the second part shall pay to said party of the first part, successors, heirs and assigns, a fee or royalty of ten dollars each for every said machine made and sold under the authority hereof, until a certain amount shall have been paid thereby, as herein provided.

6th.—That said party of the second part shall pay said fees or royalties to said party of the first part, successors, heirs and assigns as follows, namely:—on the first day of each and every month, the former shall make and give or send to the latter a statement of the number of said machines made and sold during the previous month, and on or within twenty days thereafter shall give or send as directed, such part of said fees or royalties therefor, as provided herein; and the former shall keep an account of said machines, and shall mark and number each and every one thereof, consecutively, and shall give the latter all reasonable access to said account, and all needed facilities to ascertain the correctness thereof.

7th.—That said party of the second part may 121
deduct from the sum of said fees or royalties for each and every said month, whatever sum may be necessary to pay the outside fees or royalties which must be paid to C. Latham Sholes, Phebe J. Glidden, William K. Jenne, or any other outside party, and divide the remainder into two equal parts, and pay one part to said party of the first part, successors, heirs and assigns, as herein provided, and retain and apply the other to the payment of said gross indebtedness of said $59,000, until the same shall be paid thereby.

8th.—That when and from and after said gross indebtedness of said $59,000 shall have been paid, as 122
herein provided, then said party of the second part shall pay to said party of the first part, successors, heirs and assigns, as herein provided, a fee or royalty of ten dollars each for every said machine made and sold, to the number of two thousand in any one year; and thereafter, for all over two thousand in any one year, the former shall pay to the latter, for each and every said machine made and sold, a fee or royalty of ten per cent. of the regularly established retail price thereof, as herein provided.

9th.—That in case said Yost and said American Writing Machine Company, or either of them, shall refuse or neglect or fail to fulfill and perform any 123
of the conditions and promises of said agreement of license by and between said Densmore, said Trustee, and said Yost, of January 12, 1880, then said agreement of license shall be declared void and of no farther force and effect, and said Yost or said American Writing Machine Company, or any one who may make or sell any of said "Yost" or "Caligraph" typewriting machines, will be an infringer of said patents, as herein described, enumerated and licensed; and in that case, said party of the second part is hereby authorized and empowered, in the name of said party of the first part, to bring suit

124 or action against said Yost or against said American Writing Machine Company, or against any other person or corporation, and prosecute the same for any said manufacture and sale of said "Yost" or "Caligraph" typewriting machine, for infringement of said inventions and patents of said party of the first part; but in case said conditions and promises of said agreement shall be fulfilled, then said manufacture and sale of said "Yost" or "Caligraph" typewriting machine, so far as the use of said specific devices is concerned, shall not be molested by any party hereto, and said license shall be of full force and effect.

125 10th.—That said party of the second part thereby does not consent to the use by said Yost nor by said American Writing Machine Company nor by any other person or corporation, of any recommendation, or letters of recommendation, or of other certificates, letters or writings, or of the substance or any copies of the same, issued with reference to the typewriting machines heretofore made or hereafter to be made by said party of the second part; nor does either party hereto consent to the use of any trade mark or other franchise or property of either of said parties or of any thing which belongs to either party hereto, not contained in said agreement of license of said January 12, 1880.

126 11th.—That said party of the first part shall not grant to said Yost, nor to said American Writing Machine Company, nor to any other person or party, any extension or modification of said agreement of license, of said January 12th, 1880, which may enlarge the right or lessen the obligation thereof; nor shall said party of the first part grant or assign to any other person or corporation any license for the use of any of said inventions and patents, nor for any device or part of any thereof, in said manufacture and sale of typewriting machines.

12th.—That said party of the first part hereby authorizes and empowers said party of the second

part to retain, out of any moneys due or to become 127
due to said party of the first part, as herein provided, whatever sum or sums at any time may be necessary to satisfy any judgment or decree of any court against said party of the second part for infringement of any patent of any other person or party, in said manufacture and sale of typewriting machines under the authority of any of the patents hereof; but said party of the second part, to be entitled to any said retention of moneys for said purpose, shall notify said party of the first part, in writing, and give full information of any suit or action brought by any one for such alleged infringement, and give to said party of the first part opportunity to aid in defending against any said suit or 128
action.

13th.—That said party of the first part hereby authorizes and empowers said party of the second part, in its discretion and for its own protection, to bring any necessary suit or action and to prosecute the same against any person or party, in the name of said party of the first part, for infringement of any said patent hereof; but not at any cost or expense of said party of the first part, except by the special assent or concurrence of the same.

14th.—That said party of the second part shall assign and transfer to said party of the first part, successors, heirs and assigns, all promissory notes, 129
or other obligations of indebtedness, which it holds against said George W. N. Yost, and also said 1,249 shares of said capital stock of said The Typewriter Company, as soon as, and whenever, said gross indebtedness of said $59,000 shall have been paid, as herein provided.

15th.—That in case said party of the second part shall refuse or fail reasonably and fairly to keep and perform the covenants and conditions herein to be by it kept and performed, for a period of thirty days, after notice thereof, in writing, from said party of the first part, which notice shall state specif-

130 ically the point or points wherein such refusal or failure or default of said party of the second part is claimed, then said party of the first part may declare in writing this agreement to be void; but in such case, said party of the second part shall be reverted to, and be reinstated in, all its rights and remedies against said Yost and said 1,249 shares of said capital stock of said The Typewriter Company, to recover and collect said indebtedness, the same as if this agreement never had been made.

16th.—That this agreement shall begin on and from and after said January 1st, 1880, and shall continue during the term of any and all of said patents herein referred to for improvements in typewriting
131 machines, or any and all extensions and reissues thereof, of said party of the first part, as herein provided.

DONE this thirteenth day of June, eighteen hundred and eighty-one.

THE TYPEWRITER COMPANY,
by WM. COMES, President.
AMOS DENSMORE, Treasurer.
JAMES DENSMORE, Trustee.

E. REMINGTON & SONS,
by S. REMINGTON, President.

RECEIVED for record June 27th, 1881, and recorded
132 in Liber Y 26, page 208, of Transfers of Patents.

IN TESTIMONY WHEREOF I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.]

E. M. MARBLE,
Commissioner.

133

## Addendum Agreement of License.

Whereas, C. Latham Sholes has invented certain devices and embodied the same in a new typewriting machine which he alleges is independent of all previous patents and inventions for such machines, and is in all respects equal, and in many respects superior, to any other typewriting machine yet made; and

Whereas, Said Sholes has assigned said devices and inventions to James Densmore and Amos Densmore and Daniel C. Roundy, and agreed to sign any and all papers necessary for applications for patents for the same, and to assign said applications to 134
them; and

Whereas, Said James Densmore and Amos Densmore are the chief parties in interest in The Typewriter Company, a corporation under the laws of the State of New York, which owns and controls certain patents and inventions for improvements in typewriting machines; and

Whereas, An agreement was made by and between said The Typewriter Company and E. Remington & Sons, whereby the former granted to the latter the right to use said inventions and patents in the manufacture of typewriting machines, and the latter agreed to make and sell said machines and to pay to the former for said use thereof a fee or 135
royalty of fifteen dollars each for every said machine made and sold under the authority of the same; and

Whereas, Differences have arisen between said James Densmore and Amos Densmore and said E. Remington & Sons in regard to the rightful control of said patents and inventions and to the proper application and disbursement of said fees or royalties; and

Whereas, Said E. Remington & Sons desire an amicable settlement of said differences and to avoid litigation, but insist on a reduction of the amount

136 of said fees or royalties and on a wider control of said patents and inventions; and

Whereas, Said James Densmore and Amos Densmore also desire an amicable settlement of said differences and to avoid said litigation, and for the sake thereof have yielded to said demands; and

Whereas, In accordance therewith, an agreement has been made, of even date herewith, by and between said The Typewriter Company and said James Densmore, Trustee of said Company, party of the first part, and said E. Remington & Sons, party of the second part, in regard to the patents and inventions of the former, in part settlement of said differences; now

137 Therefore, For the farther sake of peace and harmony without litigation, and to complete said amicable settlement, said James Densmore and Amos Densmore and Daniel C. Roundy, party of the first part, and said E. Remington & Sons, party of the second part, have made and hereby make an agreement as follows:

1st.—That this agreement is and shall be part and parcel and extension and continuation of said agreement of even date herewith, by and between said The Typewriter Company and James Densmore, said Trustee, party of the first part, and said E. Remington & Sons, party of the second part.

138 2d.—That said party of the first part hereby grants and licenses to said party of the second part, and to their successors, the sole and exclusive right to make and sell said Sholes said new typewriting machine, and the sole and exclusive right to use, in the manufacture and sale of typewriting machines, said Sholes new inventions and improvements in typewriting machines; and that as soon as and whenever any patent or patents shall be obtained for said inventions and improvements, said party of the first part shall make any farther agreement necessary to secure to said party of the second part the sole and exclusive right to use said inventions

and patents in said manufacture and sale of said machines. 139

3d.—That said party of the first part hereby grants and licenses to said party of the second part, and to their successors, the sole and exclusive right to make and sell said Sholes new typewriting machine separately and distinctly from said typewriting machines which said party has heretofore made and sold and still continues to make and sell, or to combine the devices of the two and develop a new typewriting machine which may combine the best parts of both, as experience may deem advisable and determine.

4th.—That said party of the second part shall pay for the use of said Sholes new inventions and patents, as provided in said agreement of even date herewith, of which this is an extension and continuation and part, but no more nor otherwise. 140

5th.—That said party of the first part shall give to said party of the second part, at any time, any farther or more definite identification or description of said Sholes new inventions herein referred to and comprehended, which may be required, but for the present said devices and inventions may be described as follows:

1.—An oval or elliptical dish or form of arrangement of the type bars, which are levers of the third order, in combination with key levers, which are levers of the first order, whereby a vertical connection is made between the key levers and type bars. 141

2.—A circular disk or form of arrangement of the type bars, which may be levers either of the first or third order, but set unequidistant apart, in combination with key levers either of the first or second order, whereby a vertical connection is made between the key levers and type bars.

3. A letter-space rack attached to the main-frame and adapted to vibrate transversely in combination with letter-space ratchets attached to the carriage.

142 4. An improved variable letter-space movement, in combination with letter-space ratchets attached to the carriage.

5. A secondary top-plate on the main-frame to which is attached the carriage and line-space movement in combination with the primary top-plate to which is attached the type-bars, whereby the carriage may be narrow and light and still removable from the types,

6. An inking-ribbon and ribbon movement, in combination with and attached to the carriage, whereby the ribbon is detached from, and does not interfere with the letter-space movement.

143 7. A letter-space rack and ratchets within and attached to the platen, in combination with the carriage.

8. A finger attached to the main-frame and adapted to point to the centre of impingement, when the platen is turned to reveal the writing, in combination with the carriage.

9. A pressure bed or plate adapted to turn on its axis, in combination with the platen.

10. A pressure-spring attached to the platen in combination with the carriage, whereby the paper written on may be always in the one and the same plane.

144 6th. That said party of the second part shall not attempt to interfere with nor molest George W. N. Yost nor the American Writing Machine Company, in the manufacture and sale of the 'Yost' or 'Caligraph' typewriting machine, under a certain license from said James Densmore, Trustee, of January 12, 1880, so long as the terms and conditions of said license are complied with, and so long as said 'Yost' or 'Caligraph' typewriting machine shall contain no device not provided for in said license, and no device under the exclusive control of said party of the second part not now on or contained in a certain exhibit 'Yost' or 'Caligraph' typewriting machine, which is numbered 115, and which the

parties hereto have marked, sealed, and designated 145
as "Model Caligraph Typewriter."

7th. That if said agreement of even date herewith, of which this is an extension and continuation and part, shall become void, for default and non-performance of covenants and conditions, as provided for therein, then this agreement also shall be void from that time forth, for the same reason.

8th. That this agreement shall continue during the term of any and all patents to be obtained for said inventions and improvements herein described, and of any and all re-issues and extensions of the same, unless sooner terminated as herein provided.

Done this thirteenth day of June, eighteen hun- 146
dred and eighty-one.

JAMES DENSMORE.
AMOS DENSMORE.
DANIEL C. ROUNDY.

By JAMES DENSMORE, Attorney.
E. REMINGTON & SONS.

By S. REMINGTON, Pres.

Sundry Assignments and Agreements were offered in evidence by Complainant for the purpose of showing that the various inventions and improvements made in typewriting machines and vested in Sholes, Densmore, Yost and others, were assigned and conveyed to The Typewriter Co. Several patents 147
were also offered in evidence for the purpose of showing the various improvements in typewriting machines owned and controlled by The Typrwriter Co., some of which were embodied in the machines manufactured and sold by E. Remington & Sons. These title papers and patents are referred to and offered in evidence, Complainant's Testimony, pp. 47–51, 455, 456, 460, 461–464. It is not deemed necessary to print these papers.

148 **Complainant's Ex.—Certified Copy of Assignment of Brooks Patent.**

DEPARTMENT OF THE INTERIOR,
United States Patent Office.

*To all persons to whom these presents shall come, greeting:*

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Byron A. Brooks, January 17, 1880, and recorded in Liber M 29, page 371.

Said record has been carefully compared with the original and is a correct transcript of the whole
149 thereof.

In testimony whereof I, S. T. Fisher, Acting Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 24th day of August, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and nineteenth.

S. T. FISHER,
[Seal.] Acting Commissioner.

Know all men by these presents, that whereas I, Byron A. Brooks, of New York, N. Y., did obtain Letters Patent of the United States for "Improvements in Typewriting Machines," which Letters
150 Patent bear date the 30th day of April, 1878, and are numbered No. 202, 923, of which said Letters Patent I am now the holder and owner; and whereas Samuel Remington, of New York City, N. Y., is desirous of purchasing from me the said Letters Patent and all the rights, privileges and advantages secured thereby.

Now I, the said Byron A. Brooks, in consideration of four thousand dollars to me in hand paid at or before the ensealing and delivery of these presents, the receipt of which is hereby confessed and acknowledged have sold, assigned, transferred and set over, and do by these presents sell, assign, trans-

fer and set over unto the said Samuel Remington, 151
his executors, administrators and assigns, the said Letters Patent and the inventions and improvements secured thereby, and all the rights, privileges and advantages granted and secured by said Letters Patent, to have and to hold the same to the said Samuel Remington, his executors, administrators and assigns, for his and their own use and behoof to the full end of the term for which the said Letters Patent were granted and any extension thereof.

And I, the said Byron A. Brooks, for myself, my heirs and representatives, do covenant, grant, promise and agree to and with the said Samuel Remington, his executors, administrators and assigns, that I, said Byron A. Brooks, am lawfully seized and am 152
the owner of the said Letters Patent and the inventions and improvements, rights, privileges and advantages thereby secured, and of the whole thereof; and that I have good right and lawful authority to sell and convey the same.

In witness whereof I have hereunto set my hand and seal this seventeenth day of January, 1880.

BYRON A. BROOKS [Seal].

In presence of
A. ALFORD.

Recorded April 13, 1883.

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154 **Complainant's Ex.—Exemplification of the Court of the Letters of Administration, etc., of Samuel Remington, deceased.**

THE PEOPLE OF THE STATE OF NEW YORK,

*To Flora A. Remington, Carver Remington and David Lewis, send greeting:*

Whereas, Samuel Remington lately departed this life intestate, being at or immediately previous to his death an inhabitant of the County of Herkimer, by means whereof the ordering and granting administration of all and singular the goods, chattels
155 and credits whereof the said intestate died possessed, in the State of New York, and also the auditing, allowing and final discharging the account thereof, doth appertain unto us; and we, being desirous that the goods, chattels and credits of the said intestate may be well and faithfully administered, applied and disposed of, do grant unto you, the said Flora A. Remington, Carver Remington and David Lewis, full power by these presents to administer and faithfully dispose of all and singular the said goods, chattels and credits, to ask, demand, recover and receive the debts which unto the said intestate whilst living and at the time of his death did belong; and to pay the debts which the
156 said intestate did owe, as far as such goods, chattels and credits will thereunto extend and the law require; hereby requiring you to make or cause to be made a true and perfect inventory of all and singular the goods, chattels and credits of the said intestate within a reasonable time, and return a duplicate thereof to our Surrogate of the County of Herkimer within three months from the date of these presents; and if further property or assets of any kind not mentioned in any inventory that shall have been so made, shall come to your possession or knowledge, to make or cause to be made in like manner a true and perfect inventory thereof, and return the same within two months after discovery

thereof, and also to render a just and true account 157
of administration when thereunto required; and we do by these presents depute, constitute and appoint you, the said Flora A. Remington, Carver Remington and David Lewis, administrator of all and singular the goods, chattels and credits of the said Samuel Remington, deceased.

In testimony whereof, we have caused the seal of Office of the said Surrogate of said county to be hereunto affixed. Witness Amos H. Prescott, Surrogate of said County, at the village of Herkimer, this 18th day of December, in the year of our Lord one thousand eight hundred and eighty-two. 158

AMOS H. PRESCOTT,
[L. S.] Surrogate.

STATE OF NEW YORK,
County of Herkimer Surrogate's Office, } ss.

GEORGE H. BUNCE, Clerk of the Surrogate's Court of the said County of Herkimer, do hereby certify that I have compared the annexed copy of Letters of Administration of the Goods, Chattels and Credits of Samuel Remington, deceased, with the original record thereof in this office, in Book 1 of Letters of Administrations on page 303, and that 159
the same is a correct transcript therefrom and of the whole of said original record. And I further certify that said Letters are unrevoked of record.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at Herkimer, N. Y., this eighth day of September, 1894.

GEORGE H. BUNCE,
[SEAL.] Clerk.

160 STATE OF NEW YORK,
Herkimer County Surrogate's Office, } ss.

I, EUGENE E. SHELDON, Surrogate of the County of Herkimer, and sole presiding magistrate of the Surrogate's Court of Herkimer County (the same being a Court of Record), do hereby certify that George H. Bunce is the Clerk of said Surrogate's Court, and that full faith and credit are due to his official acts; that as such Clerk he has authority to certify the records of said Court, and to affix the seal of said Court thereto.

I further certify, that the seal affixed to the foregoing exemplification is the seal of our Surrogate's Court and that the signature to the said exemplification is the genuine signature of said George H. Bunce, and that the attestation is in due form, and in conformity with the Laws of the State of New York.

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In witness whereof, I have hereunto set my hand and seal of office, this eighth day of September, A. D., 1894.

EUGENE E. SHELDON,
[SEAL.] Surrogate.

STATE OF NEW YORK,
County of Herkimer, } ss.

162 I, GEORGE A. HARDIN, presiding Magistrate of the General Term of the Supreme Court, of the 4th Department of the State of New York, do hereby certify that Eugene E. Sheldon is the Surrogate of the County of Herkimer and that I am well acquainted with his handwriting and I further certify that the signature to the foregoing attestation purporting to be signed by him is the genuine signature of said Eugene E. Sheldon.

And I further certify that George H. Bunce is Clerk of the Surrogate's Court of Herkimer County and as such he has authority to certify the records of said Court and to affix the seal of the Court

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thereto. And I further certify that I am acquainted 163
with the handwriting of said George H. Bunce and that the signature to the foregoing exemplification purporting to be signed by him is the genuine signature of said George H. Bunce.

In witness whereof, I have hereunto set my hand and caused the seal of said Court and County to be hereunto affixed this 10th day of Sept., A. D., 1894.

GEO. A. HARDIN,
[SEAL.] Presiding Justice of Supreme Court, of the 4th Judicial Department, N.Y.

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**Complainant's Ex. Assignment of Brooks' Patent from Samuel Remington's Administrators to E. Remington & Sons.**

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy from the records of this office of an instrument of writing executed by Carver Remington and David Lewis, as Administrators, April 20, 1885, and re- 165
corded in Liber T 32, page 198.

Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

In testimony whereof, I, S. T. FISHER, Acting Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 24th day of August, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and nineteenth.

S. T. FISHER,
[SEAL.] Acting Commissioner.

166 This memorandum of Agreement made this 20th day of April, 1885, between Carver Remington and David Lewis, both of Ilion, N. Y., as administrators of the goods, chattels and credits of the late Samuel Remington, deceased, of the first part, and E. Remington & Sons, of said Ilion, of the second part, witnesseth, that

Whereas, Letters Patent of the United States were heretofore issued to Byron A. Brooks, of New York, N. Y., for "Improvements in Typewriting Machines," bearing date the 30th day of April, 1878, and numbered 202,923, and

Whereas, the said Byron A. Brooks did by assignment in writing under his hand and seal, and
167 bearing date the 17th day of January, 1880, sell, assign, transfer and set over unto the said Samuel Remington, his executors, administrators and assigns, the said Letters Patent and the inventions and improvements secured thereby, and all the rights, privileges and advantages granted and secured by said Letters Patent, and

Whereas, The said Samuel Remington died in or about the month of December, 1882, and the parties of the first part herein were duly appointed by the Surrogate of the County of Herkimer, in the State of New York, administrators of the goods, chattels, and credits of the said Samuel Remington, deceased, and

168 Whereas, E. Remington & Sons, the parties of the second part, are desirous of acquiring the title to the said Letters Patent and inventions and improvements, &c.;

Now, therefore, for and in consideration of one dollar and other valuable considerations to the parties of the first part by the parties of the second part in hand paid, at or before the ensealing of these presents, the said parties of the first part have sold, assigned, transferred and set over, and do by these presents, sell, assign, transfer and set over unto the parties of the second part, their successors and assigns, the said Letters Patent and the inventions and

improvements secured thereby, and all the rights, 169
privileges and advantages granted and secured by said Letters Patent; and all claims, actions and rights of action for royalties and license fees for the use of said inventions and improvements and all damages and profits for the infringement of said Patent by any and all persons, firms and corporations; to have and to hold the same to the said parties of the second part, their successors and assigns for their own use and behoof, as fully and entirely as the parties of the first part could and would have enjoyed the same had these presents not been made.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written. 170

As administrators of the goods, chattels, and credits of the late Samuel Remington, deceased.

CARVER REMINGTON, [Seal]
DAVID LEWIS, [Seal]

STATE OF NEW YORK, }
COUNTY OF HERKIMER, } ss.

Before me, this 20th day of April, 1885, personally came David Lewis and Carver Remington, to me known to be the same persons described in and who executed the foregoing assignment, and to me also 171
known to be the administrators of the goods, chattels and credits of the late Samuel Remington, deceased, and severally and duly acknowledged that they executed the said instrument of assignment as such administrators.

In witness whereof I have hereunto set my hand and official seal the day and year first above written.

Recorded April 23, 1885.

G. O. RASBACH,
Notary Public
[Seal.] In and for Herkimer Co., N. Y.

172 **Complainant's Ex. Original Contract between Wyckoff, Seamans & Benedict and E. Remington & Sons.**

This memorandum of agreement made this 29th day of July, 1882, by and between E. Remington & Sons, of Ilion, New York, parties of the first part, and W. O. Wyckoff, of Ithaca, New York, C. W. Seamans, of New York City, and H. H. Benedict, of Ilion, New York, parties of the second part, witnesseth:

That for and in consideration of the premises, and of the covenants and conditions herein named, to be performed by the parties of the second part, and of
173 one dollar in hand paid to the parties of the first part by the parties of the second part at or before the ensealing of these presents, the receipt whereof is hereby confessed and acknowledged, the parties of the first part have agreed and do hereby agree to sell to the parties of the second part their entire product of typewriters, for the term of one year from the first day of August, 1882, at and for the price of fifty dollars for each No. 2 machine, and forty dollars for each No. 4 machine, packed and delivered in New York City; and that they, the parties of the first part, will upon reasonable notice, sell and supply to the parties of the second part said typewriters in sufficient quantities to meet and
174 supply the demand.

And the parties of the first part have further agreed and do hereby agree for the consideration as aforesaid to sell and supply to the parties of the second part all such parts of said machines as they may require, on reasonable notice, at fifty per cent. discount from the present list prices of the parties of the first part; and that they, the parties of the first part, will remodel and repair for the parties of the second part, such machines as may require remodeling and repairing, upon reasonable notice, at the present net prices charged by the parties of the first part to their New York office; except in cases

where it shall appear that such prices do not afford 175
sufficient profit to the parties of the first part; in which case the prices to be charged for such repairing and remodeling shall be the subject of a mutual agreement between the parties hereto.

And the parties of the second part for and in consideration of the premises, and the covenants and conditions herein contained to be performed by the parties of the first part, and for the consideration of one dollar to them in hand paid by the parties of the first part, at or before the ensealing of these presents, the receipt of which is hereby confessed and acknowledged, have agreed and do hereby agree, to purchase said typewriters, and parts of typewriters, and that they will pay for the same 176
and for the remodelling and repairing of such machines as shall be repaired and remodelled for them at the rates and prices aforesaid, such payments to be made as follows, namely: For all typewriters or parts, and all remodelled or repaired machines delivered up to the 15th day of the next preceding month the parties of the second part shall pay on the first day of each month; and for all typewriters, and parts, and machines repaired and remodelled delivered up to the first day of each month, they, the parties of the second part, will make payment on the 15th day of the same current month.

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And the parties of the second part for the consideration as aforesaid do further covenant and agree to and with the parties of the first part that they will purchase sufficient typewriters to meet the demands of the market and that they will use due dilligence to increase and stimulate the demand for said machines. And whereas the parties of the first part have already in existence in different parts of the United States, agencies, offices and storerooms for the sale of said typewriters, the parties of the second part shall assume all existing contracts with the agents of the parties of the first part, and with the landlords and lessors of the

offices and storerooms aforesaid; and shall indemnify and save harmless the parties of the first part from any and all prospective liability or obligation towards the said agents, landlords, and lessors.

And whereas by an agreement bearing date the 13th day of June, 1881, by and between the Typewriter Company and James Densmore, as Trustee, of one part, and E. Remington & Sons of the other part, the said E. Remington & Sons have the right to retain from the royalties for the manufacture and sale of Typewriters a certain sum per machine to be applied on certain indebtedness owing to the said E. Remington & Sons by the said Typewriter Company and James Densmore, as Trustee, which said amount which the said E. Remington & Sons have the right to retain as aforesaid, is at the present time about three dollars and a quarter per machine; which amount so to be retained it is desired to increase; Now, therefore, for the consideration as aforesaid, the parties of the second part covenant and agree to and with the parties of the first part that they, the parties of the second part, will, in addition to the foregoing prices, pay to the parties of the first part, on account of the indebtedness of the said Typewriter Company and James Densmore, as Trustee, and to be applied thereon, such a sum on each machine purchased as above, which added to the amount which the parties of the first part are now entitled to retain from the royalties as aforesaid, shall make and amount to five dollars per machine. And for such additional amounts so paid by the parties of the second part to the parties of the first part to be applied on said indebtedness as aforesaid, the parties of the first part shall give and deliver receipts to the parties of the second part.

And the parties of the first part further covenant and agree for the consideration as aforesaid that they will during the existence of the term of this contract, loan the office-furniture and fixtures

which belong to them, the parties of the first part, 181
at their said agencies, free of charge. But in the event of this contract being extended, the parties of the second part are to purchase from the parties of the first part the said furniture and fixtures at prices then to be mutually agreed upon.

In witness whereof, the parties have executed these presents in duplicate the day and date first aforesaid.

E. REMINGTON & SONS,
by S. Remington, Presdt.
W. O. WYCKOFF.
C. W. SEAMANS.
H. H. BENEDICT.

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[SEAL]

For, and in consideration of one dollar by each of the parties to the above agreement, to the other party in hand paid, the receipt of which is hereby acknowledged, and for other valuable considerations, it is hereby mutually agreed by and between the parties aforesaid that the term of the above contract shall be and the same is hereby extended for one year from the first day of August, 1883, or in other words, the said contract or agreement shall continue in force until the first day of August, 1884.

In witness whereof the parties aforesaid have 183
hereunto set their hands and seals, this twentieth day of December, A. D., 1882.

E. REMINGTON & SONS,
by E. Remington, Treas. [SEAL]

WYCKOFF, SEAMANS & BENEDICT,
by H. H. Benedict. [SEAL]

184 **Complainant's Ex. Extension Contract, Oct. 6, 1883**

Office of Remington's Armory,
Illinois, N. Y., Oct. 6, 1883

In consideration of one dollar in hand paid to E. Remington & Sons, by Wyckoff, Seamans & Benedict, the receipt of which is hereby acknowledged, It is hereby understood and agreed that the contract at present existing between the said E. Remington & Sons, and the said Wyckoff, Seamans & Benedict, relative to the purchase and sale of Typewriters shall be, and the same is hereby extended for two years, from August 1, 1884, or until
185 August 1, 1886.

E. REMINGTON & SONS,
E. REMINGTON, Tr.,
WYCKOFF, SEAMANS & BENEDICT,
by H. H. BENEDICT.

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**Complainant's Ex. Extension of Contract for the Sale of Typewriters between E. Remington & Sons and Wyckoff, Seamans & Benedict, Dated Sept. 9, 1885.**

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In consideration of one dollar in hand paid to E. Remington & Sons by Wyckoff, Seamans & Benedict, the receipt of which is hereby acknowledged, it is hereby understood and agreed that the contract at present existing between the said E. Remington & Sons, and the said Wyckoff, Seamans & Benedict, relative to the purchase and sale of Typewriters shall be, and the same is hereby renewed and extended for five years, from August 1, 1886, or until August 1, 1891, excepting that Wyckoff, Seamans & Benedict are to refund to E. Remington & Sons any amount which they pay as freight.

It is farther agreed that when said contract has been fully performed up to and including the time to which it has been or may hereafter be extended, or otherwise terminated, said E. Remington & Sons, on final settlement will receive from said Wyckoff, Seamans & Benedict, all new typewriter parts they may then have in stock, at the prices fixed and agreed upon under said contract. 187

E. REMINGTON & SONS.
E. REMINGTON, Tr.

September 9th, 1885.

In consideration of one dollar in hand paid to E. Remington & Sons by Wyckoff, Seamans, & Benedict, the receipt of which is hereby acknowledged, it is hereby understood and agreed that the contract at present existing between the said E. Remington & Sons and the said Wyckoff, Seamans & Benedict, relative to the purchase and sale of Typewriters shall be, and the same is hereby renewed and extended for five years from August 1, 1886, or until August 1, 1891, excepting that goods are to be delivered free on board at Ilion instead of New York. 188

It is farther agreed that when said contract has been fully performed up to and including the time to which it has been or may hereafter be extended, or otherwise terminated, said E. Remington & Sons, on final settlement, will receive from said Wyckoff, Seamans & Benedict, all new typewriter parts they may then have in stock, at the prices fixed and agreed upon under said contract. 189

E. REMINGTON & SONS,
by E. REMINGTON, Tr.
WYCKOFF, SEAMANS & BENEDICT.

Sept. 9, 1885.

190 **Complainant's Ex, E. Remington & Sons' Contract, March 22, 1886.**

Memorandum, made this 22d day of March, 1886, between E. Remington & Sons, a corporation, organized and doing business under the laws of the State of New York, of the first part, and William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, all of the City of New York, of the second part,

Witnesseth that the party of the first part, by virtue of a resolution duly adopted and passed by its Board of Trustees, and for the consideration of $196,954, by the parties of the second part to the
191 party of the first part in hand paid, at or before the ensealing of these presents, the receipt of which is hereby confessed and acknowledged, has sold, assigned, transferred and set over, and does by these presents, sell, assign, transfer and set over, unto the parties of the second part, the following described franchises, rights, interests, goods, wares, merchandise and property, namely:

First, a certain agreement of license made, executed and delivered by the Typewriter Company and James Densmore, as Trustees, &c., of the first part, and E. Remington & Sons, party of the second part, dated June 13th, 1881, and recorded in the patent office at Washington, on the 27th day of
192 June, 1881, in liber Y 26, at page 199, &c., together with all the rights, privileges, franchises, property and interests of every name and nature whatsoever, secured to the party of the first part, or intended so to be.

Together also with whatsoever rights, interests or property still remains to the party of the first part, in, of or by reason of another certain agreement made and entered into on the 1st day of November, 1875, by and between E. Remington & Sons, of the first part, and the Typewriter Company, of the second part, which said agreement was recorded in the United States Patent Office, on the 7th day of February, 1880, in Liber X 24 at page 217.

Second, all the right, title and interest of the party of the first part in, of, to and growing out of two certain agreements in writing, executed by G. W. N. Yost, and both bearing date the 28th day of October, 1878, the first of which was recorded in the United States Patent Office, on the 8th day of November, 1879, in Liber W 24, at page 32, and the second of which was recorded on or about the 20th day of February, 1883, in said Patent Office, in Liber Y 23, at page 130. 193

Third, certain Letters Patent or the United States, heretofore granted to Byron A. Brooks, dated April 30th, 1878, and numbered 202,923, and which were assigned to the party of the first part herein by written assignment dated January 17th, 1880, recorded in the United States Patent Office, April 13th, 1883, in Liber M 29, at page 371, together with all the right, title and interest of the party of the first part in, of and to the said Letters Patent, and the inventions and improvements secured, or intended to be secured thereby. 194

It being the intent of these presents to transfer and convey to the parties of the second part by the party of the first part, all the rights, privileges and franchises which the party of the first part now has, holds or owns, in and about the manufacture, use and sale of typewriting machines heretofore made by the party of the first part, which are sometimes known and designated as the Sholes and Glidden typewriting machines, and more generally as the Standard Remington typewriter, together with the right to the parties of the second part to use and employ in connection with the said typewriting machines the title, "Standard Remington typewriter"; to the exclusion of the use of the said title or term by the party of the first part, or by any other person or persons. 195

Fourth, all special tools pertaining to the manufacture of typewriters now owned by the party of the first part, no matter where situated or with what

machines connected, including all patterns and models at Ilion, Syracuse or elsewhere, and including all cases, cupboarding and drawers heretofore specially used for and in connection with the manufacture of typwriters, and all boxes specially made or used for carrying typewriter work, and the aligning benches and chairs, in the aligning room at the works of the party of the first part, in Ilion aforesaid.

Fifth, all material specially provided for the manufacture of typewriting machines now on or about the works and premises, of the party of the first part, whether raw, unmanufactured, or in process of manufacture, and all machines in process of construction but not finished at the date of the execution of these presents.

Sixth, all the following machines now belonging to the party of the first part, and being contained in the department of Brooks and of Jenne, at the works of the party of the first part, namely:

12 milling machines, Lincoln pattern;
3 milling machines, Rack pattern;
3 hand lathes;
2 1 spindle edging machines;
2 4 spindle geared drill presses, large;
1 4 spindle geared drill presses, small;
2 3 spindle geared drill presses, small;
1 1 punch press, Fowler No. 2;
1 small punch press;
1 large turret screw machine;
1 small gear cutter;
1 face milling 5 spindle machine;
1 grindstone and frame;
1 large turret screw machine;
1 Watertown shaper;
1 tapping machine;
1 punch press, Fowler No. 2;
1 punch press, Fowler No. 2½;
1 punch press, Styles and Parker No. 2;
1 punch press, Styles and Parker No. 1;
1 spindle edging machine, Remington;

2 6 spindle drilling machines;
1, 4 spindle Pratt & Whitney drill presses, large;
1, 4 spindle Pratt & Whitney drill presses, small;
7 milling machines, Lincoln pattern;
4 hand milling machines, Remington;
1 hand milling machine, double header, upright;
1 double head turning and grinding machine;
2 hand lathes;
1 screw cutting lathe, Ames;
1 screw cutting lathe, Putman;
1 back geared engine lathe, short bed;
1 grinding lathe;
1 milling machine index, Ames;
1 planer four-feet bed, Putman;
1 back geared single spindle jobbing drill;
2 grinding spindles on 1 bed;
1 grindstone;
3 small and 3 large tumbling barrels;
37 vices bench four inch;
1 screw turning lathe, Putman;
1 cutter grinding machine;
2 hand milling machines;

Also all the following machines, being in the department of Thomas Ringwood, on said premises, namely:

3 No. 2 Pratt & Whitney screw machines;
3 No. 4 Brown & Sharp screw machines;
1 small punch press;
1 hand milling machine;
1 tapping machine;
1 roll grinding machine;
1 small 2 spindle drill press;
2 polishing frames;
1 hand lathe;

Also all the following machines, being in the polishing room of Walter Baker, on the said premises, namely:

6 polishing frames;
1 belt polishing lathe;

202 12 spindles;
6 pulleys;
50 wheels;
1 glue table and washing sink;
1 washing machine.

Together with such taps, dies, drills, reamers, counterbores and other tools as have been used on the typewriter job and are now used in connection with the above mentioned machines, in the departments of Brooks and of Jenne, including all tools, forgings, castings and materials of all descriptions in Jenne's room, being the third floor of building No. nine in the said works of the party of the first part,
203 with the exception of such as pertain to the work and machinery in the northeast corner of said room, which are situated north and east of the passageway and which do not in any way pertain to the manufacture of the typewriter.

And the party of the first covenants, promises and agrees to and with the parties of the second part, that it will not hereafter engage in the manufacture of typewriting machines of any name or character, for the period of ten years from the date of these presents.

And the parties of the second part, in consideration of the premises and of one dollar and other valuable considerations to them in hand paid by
204 the party of the first part, do hereby jointly and severally covenant, promise and agree, to and with the party of the first part, and its successors, that they will at all times indemnify and save harmless the party of the first part, of, from and against any and all covenants, promises and agreements, to be by the party of the first part kept and performed from and after the execution and delivery of these presents, contained in or growing or arising out of the said agreement of license bearing date June 13, 1881, and the said agreement bearing date November 1, 1875; and that they, the parties of the second part, will take the place of the party of the first part so far as the keeping and performance of the

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said promises and agreements is concerned, and 205
that they will keep and perform the same, and that in consideration of the covenants hereinbefore contained to the effect that the party of the first part will not engage in the manufacture and sale of typewriting machines, that they, the parties of the second part, will maintain and keep the said business and industry of manufacturing typewriting machines in the said village of Ilion, for a term not less than three years from the date of these presents.

And, whereas, an agreement exists between the party of the first part and the parties of the second part, whereby the sale of typewriting machines manufactured by the party of the first part is con- 206
ferred exclusively upon the parties of the second part for a term of six years, or thereabouts, with certain stipulations on the part of the party of the first part to supply the parties of the second part with typewriting machines, &c., it is understood and agreed that such agreement and all agreements in that behalf are hereby abrogated and cancelled.

And the parties do hereby mutually covenant and agree, to and with each other, that either party will, upon request of the other, at any time hereafter further assurance make with reference to any of the matters and things herein contained, so as to more perfectly effectuate the purposes and intents of these presents. 207

And for the considerations aforesaid, the party of the first part has sold, assigned, transferred and set over, and does by these presents sell, assign, transfer and set over, unto the parties of the second part, a certain addendum agreement of license, made, executed and delivered by James Densmore, Amos Densmore and Daniel C. Roundy, of the first part, and E. Remington & Sons, of the second part, dated June 13, 1881, and recorded in the United States Patent Office on the 27th day of June, 1881, in Liber Y 26, page 208, of Transfers of patents, together with all the rights, privileges, franchises,

property and interests of every name and nature whatsoever, secured thereby to the party of the first part, or intended so to be.

And it is understood by these presents, that the several covenants and agreements, hereinbefore entered into by the parties hereto, with reference to the agreement of license, dated June 13, 1881, hereby transferred are to apply to the said addendum agreement of license, as though they had been specially inserted herein with reference to the same.

It is also further understood and agreed by and between the parties that a certain bill or invoice for tin ordered from the N. and G. Taylor Company, of Philadelphia, and amounting to about one thousand dollars, be the same more or less, part of which tin has arrived, or is about arriving, is to be assumed and paid for by the parties of the second part.

It is further understood and agreed that the term heretofore used in the fifth item of specification of things sold, "all machines in process of construction but not finished," is to be construed and understood as meaning all machines that are not actually aligned and ready for boxing.

IN WITNESS WHEREOF, the parties hereto have executed these presents in duplicate the day and year first above written.

E. REMINGTON & SONS,
By P. REMINGTON, Pres.

[SEAL] W. O. WYCKOFF, [SEAL]
C. W. SEAMANS, [SEAL]
H. H. BENEDICT. [SEAL]

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STATE OF NEW YORK, } ss.
County of Herkimer, }

Before me, this 20th day of March, 1886, personally came Philo Remington, to me known, and to me known to be the president of the corporation, E. Remington & Sons, who being by me duly sworn did depose and say, that he was the president of the said corporation, and that he knew the corporate seal of the said corporation, that the corporate seal affixed to the foregoing written instrument was such corporate seal, that the same was thereunto affixed by order of the Board of Trustees, of the said corporation, and that he executed the said foregoing written instrument as the president 212
of said corporation by the like Order.

THOS. RICHARDSON,
Notary Public in and for the
[SEAL] said County of Herkimer.

CITY AND COUNTY } ss.:
OF NEW YORK, }

On this 22d, day of March, 1886, before me personally came William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, to me personally known to be the same persons described in and who executed the foregoing written instrument, and 213
severally and duly acknowledged that they executed the same.

WM. F. LETT,
Notary Public in and for the said City and County of New York, and Kings County.
Certified in New York.

[SEAL]

214 **Complainant's Ex.—E. Remington & Sons, Contract, March 22, 1886.**

Received for record March 27, 1886, and recorded in Liber Z 34, page 85, of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

W. V. MONTGOMERY,
[Seal.] Commissioner of Pateats.

For value received, we, E. Remington & Sons, of Ilion, N. Y., a corporation organized under the laws of the State of New York, of the first part, have sold, assigned, transferred and set over, and do by
215 these presents sell, assign, transfer and set over unto William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, of New York City, of the second part. a certain agreement of license, in writing, bearing date the 13th day of June, 1881, executed by the Typewriter Company and by James Densmore, as trustee, parties of the first part therein, and by E. Remington & Sons, parties of the second part therein, which said agreement of license was recorded in the United States Patent Office at Washington on the 27th day of June, 1881, in Liber Y 26, at page 199, of Transfers of Patents.

And for the same consideration we, the parties of the first part, have also sold, assigned, transferred
216 and set over, and do by these presents sell, assign, transfer and set over, unto the said parties of the second part, a certain addendum agreement of license, in writing, bearing date the 13th day of June, 1881, executed by James Densmore, Amos Densmore and Daniel C. Roundy, of the first part, and E. Remington & Sons, of the second part, which addendum agreement of license was recorded in the United States Patent Office at Washington on the 27th day of June, 1881, in Liber Y 26, page 208, of Transfers of Patents.

Together with all the rights, property, interests, privileges and franchises owned, held or enjoyed by

the parties of the first part in and by virtue of the said agreement of license and the said addendum agreement of license, each and both of them. 217

To have and to hold the same to the parties of the second part, their heirs and assigns forever.

In witness whereof we have caused these presents to be executed and our corporate seal to be hereunto attached this 22d day of March, 1886.

E. REMINGTON & SONS,
[Seal.] by P. REMINGTON, Pres't.

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**Complainant's Ex. — E. Remington & Sons, Lease, March 22d, 1886.**

This indenture, made this 22d day of March, 1886, by and between E. Remington & Sons, a corporation organized and doing business under the laws of the State of New York, located in the Village of Ilion, County of Herkimer, said State, of the first part, and William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, of the City of New York, of the second part.

Witnesseth, That the party of the first part, for and in consideration of the premises and of one dollar to it in hand paid by the parties of the second part, at or before the ensealing of these presents, 219 has agreed to let, and hereby does let, to the said parties of the second part, and the said parties of the second part have agreed to take, and hereby do take, from the said party of the first part the buildings, real estate and property hereinafter mentioned and described, being situated in the said Village of Ilion, and being part of the works owned and occupied by the party of the first part, namely, all of that certain brick building of the dimensions of about forty feet by eighty feet, four stories high, known as Building No. 9, on a plan or plot of E. Remington & Sons' Armory, Ilion, N. Y., made De-

220 cember 31, 1876, and now being in the possession of the party of the first part; and also all that two-story brick engine-house known as Building No. 8, on said plan and plot; and also all that building known as No. 7. on said plan and plot; also that four-story brick building known as No 9½, on the said plan and plot; and the third story of that certain brick building known as No. 12, on the said plan and plot, as far as the brick partition wall in the said story, and also all the fourth story of the said building No. 12, which is now used as an assembling and aligning room in the manufacture of typewriter machines.

Excepting from the foregoing described premises,
221 the first or ground floor of Building No. 9, commencing at the front part thereof and running back to the partition wall in the said building; and also excepting the upper or second story of Building No. 7.

Together with the engine and boilers, shafting, hangers, pulleys, steam and gas piping and all permanent fixtures in the said buildings hereby demised, and also the chimney used in connection with the same.

For the term of three years, to commence on the 23rd day of March, 1886, and terminating on the 23rd day of March, 1889.

And the said parties of the second part hereby
222 covenant and agree to pay unto the said party of the first part the sum of three thousand dollars per annum as the rental of the said premises and property, payable, one-fourth thereof at the end of each and every three months from the commencement of this lease.

And the parties of the second part covenant and agree, to and with the party of the first, to furnish with the said boilers and engine necessary motive power to run the machinery now in the old armory or No. 6 building, and in No. 9 and 13 buildings on the said plan and plot in the second story of No. 7 building and in the building No. 12 upon

said plan and plot. And as it is estimated that the 223
machinery of the party of the first part to be run and driven by the said engine and boilers as aforesaid will be about equal in the amount of power that it will require to that required by the machinery of the parties of the second part to be placed in the said buildings and premises hereby demised to them, it is hereby understood and agreed that the parties of the second part shall furnish fuel, engineer and fireman or whatever labor is necessary in that regard and oil in and about running the said boilers and engine and they shall keep an exact account of the same, and that they shall charge to the party of the first part one-half of such expense, and that they may and shall deduct the one- 224
half of the said expenditures from the rents hereby reserved to the party of the first part as they become payable, and the same shall be in full payment for the motive power furnished by the parties of the second part to the party of the first part.

Should either of the parties hereto materially or substantially increase the amount of machinery to be placed in the premises respectively occupied by them and run by the said boilers and engine, an equitable allowance shall be made on the one side or the other for the increased power that such increased machinery shall require.

The party of the first part shall pay all taxes and 225
assessments on the said premises hereby demised, and they shall keep the buildings hereby demised insured against loss and damage by fire.

It is further understood and agreed by and between the parties that the engine and boilers are to be maintained and kept in repair by and at the expense of the party of the first part.

It is further understood and agreed by and between the parties hereto that by giving three months' notice, in writing, to the party of the first part, prior to the expiration of this lease, the parties of the second part shall have the right and option of renewing or continuing this lease, on the same

226 terms. For the period of three years from and after the term hereby limited for the expiration thereof.

In witness whereof, the parties have executed these presents in duplicate the day and year first above written.

[Seal] E. REMINGTON & SONS,
By P. REMINGTON, Pres.

W. O. WYCKOFF, [Seal]
C. W. SEAMANS, [Seal]
H. H. BENEDICT, [Seal]

STATE OF NEW YORK, }
COUNTY OF HERKIMER, } ss.

227 On this 20th day of March, 1886, before me came Philo Remington, to me personally known, and known to be the president of the corporation, E. Remington & Sons, who being by me duly sworn, did depose and say, that he was the president of said corporation, and that he knew the corporate seal of the said corporation, that the seal affixed to the foregoing instrument in writing was such corporate seal, that the same was thereunto affixed by order of the Board of Trustees of the said corporation, and that he executed the said written instrument as president of the said corporation by the like order.

[Seal] THOS. RICHARDSON,

228 Notary Public in and for the said County of Herkimer.

CITY AND COUNTY OF NEW YORK, ss.:

Before me, this 22nd day of March, 1886, came William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, to me personally known to be the same persons described in and who executed the foregoing written instrument and severally and duly acknowledged that they executed the same.

[Seal] WILLIAM F. LETT,

Notary Public in and for the said City and County of New York, and Kings Co. certified in N. Y.

**Complainant's Ex. E. Remington & Sons, Assignment to William O. Wyckoff, et al, March 22nd, 1886.** 229

Received, for record, March 27, 1886, and recorded in Liber Z 34, page 87, of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

M. N. MONTGOMERY,
[SEAL.] Commissioner of Patents.

For value received, we, E. Remington & Sons, a corporation organized under the laws of the State of New York, have sold, assigned, transferred and set 230
over, and do by these presents, sell, assign, transfer and set over, unto William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, of New York City, certain United States Letters Patent, heretofore issued to Byron A. Brooks, bearing date April 20th, 1878, and numbered 202,923, together with the inventions and improvements secured thereby, and all the rights, privileges and advantages granted and secured by said Letters Patent. To have and to hold the same to the said Wyckoff, Seamans and Benedict, their heirs and assigns forever.

In witness whereof, we have caused these presents to be executed and our corporate seal to be 231
hereunto attached this 22nd day of March, 1886.

E. REMINGTON & SONS,
[SEAL.] by P. Remington, President.

232

**Complainant's Ex. Certificate of Incorporation of Standard Typewriter Manufacturing Co., filed in Herkimer County.**

STATE OF NEW YORK, } ss.:
County of Herkimer, }

Be it known that we, Marshall W. Carter, William O. Wyckoff, Clarence W. Seamans, and Henry H. Benedict do by these presents, pursuant to and in conformity with the Act of the Legislature of the State of New York, passed on February 17th, 1848,
233 entitled, "An Act to authorize the formation of Corporations for manufacturing, mining, mechanical or chemical purposes," and the several acts of the said Legislature amendatory thereof and supplementary thereto, associate ourselves together and form a body politic and corporate under the name and Style of "Standard Typewriter Manufacturing Company."

The objects for which the said corporation is formed are as follows: "The manufacture and sale of Typewriting Machines, parts of and attachments therefor, and any and all articles to be used in connection therewith."

That the capital stock of the said corporation
234 shall be two hundred and twenty-five thousand dollars, which shall be divided into four hundred and fifty shares of five hundred dollars each.

That said Corporation shall commence on the 15th day of April, 1886, and shall continue in existence for the term of fifty years.

The number of trustees of the said Corporation shall be five, whose names are as follows:

Marshall W. Carter, William O. Wyckoff, Clarence W. Seamans, Henry H. Benedict, and William K. Jenne, who shall manage the concerns of the said corporation for the first year.

The principal place of business of the Corporation shall be in the Village of Ilion, Town of German Flatts, County of Herkimer, and State of New York. 235

Dated, Ilion, New York,

April 8th, 1886.

MARSHALL W. CARTER [L. S.].
WILLIAM O. WYCOFF [L. S.].
CLARENCE W. SEAMANS [L. S.].
HENRY H. BENEDICT [L. S.].

STATE OF NEW YORK, } ss.:
County of Herkimer, }

23

On this 8th day of April, 1886, before me personally came Marshall W. Carter and Clarence W. Seamans to me known to be the individuals described in the foregoing certificate and who executed the same, and they severally before me signed the said certificate and acknowledged that they signed the same for the purposes therein mentioned.

THOS. RICHARDSON,

[L. S.] Notary Public, in and for the County of Herkimer.

STATE OF NEW YORK, } ss.:
Herkimer County Clerk's Office, }

237

I, ARTHUR T. SMITH, Clerk of the County of Herkimer, and also Clerk of the Supreme and County Courts held therein, the same being Courts of Record and having a common seal, do hereby certify that Thomas Richardson, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and therein written was at the time of taking such acknowledgment a Notary Public in and for said County of Herkimer, dwelling in said county and sworn and duly authorized to take the same, and that I am well acquainted with his handwriting and verily believe that the

238 name subscribed to said certificate of proof or acknowledgment is his genuine signature, and that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof, I have hereunto set my hand and seal of the said County and Courts, at Herkimer, this 12th day of April, 1886.

A. T. SMITH,
Clerk.

[L. S.]

STATE OF NEW YORK,
City and County of New York, } ss.

239 On this ninth day of April, 1886, before me personally appeared William O. Wyckoff, and Henry H. Benedict, to me known to be the individuals described in the foregoing certificate, and they severally before me signed the said certificate, and acknowledged that they signed the same for the purposes therein mentioned.

WILLIAM H. CHAPMAN,
Notary Public Kings County,
Certificate filed in and for
the said City and
County of New York.

[L. S.]

240

STATE OF NEW YORK,
City and County of New York, } ss.

I, James A. Flack, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, do hereby certify that William H. Chapman has filed in the Clerk's office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the proof or acknowledgement of the annexed instrument, duly authorized to take the

same. And further that I am well acquainted with 241
the handwriting of such Notary and verily believe the signature to the said certificate of proof or acknowledgement to be genuine.

In testimony whereof I have hereunto set my hand and official seal of the said Court and County, the 9th day of April, 1886.

JAMES A. FLACK,
[L. S.] Clerk.

HERKIMER COUNTY, } ss.
Clerk's Office, }

242

I, Duane M. Richardson, Clerk of said County, do hereby certify that I have compared the annexed copy of Articles of Incorporation, Standard Typewriter Manufacturing Company, with the original thereof, now filed in this office and that the same is a true copy thereof, and of the whole of said original.

Witness my hand and seal of office, this 17th day of January, 1899.

D. M. RICHARDSON,
[SEAL & STAMP.] Clerk.

I, Irving R. Devendorf, sole and presiding Judge 243
of the County Court of Herkimer County aforesaid, the same being a Court of Record, do hereby certify that the foregoing certificate and attestation is in due form of law and executed by the proper officer authorized to execute the same.

Witness my hand at Herkimer, N. Y., this 20th day of February, 1899.

IRVING R. DEVENDORF.
Herkimer County Judge.

244 STATE OF NEW YORK, }
Herkimer County Clerk's Office, } ss.

I, Duane M. Richardson, Clerk of the County of Herkimer and of the County Court of Herkimer County aforesaid, the same being a court of Record and having a common seal, do hereby certify that the said Irving R. Devendorf, whose name is signed to the last foregoing certificate, is the sole and presiding Judge of the County Court of Herkimer County aforesaid and is duly commissioned and qualified to act as such Judge as aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of the said county and
245 said Court this 20th day of February, 1899.

D. M. RICHARDSON,
[SEAL.] Clerk of Herkimer County.

This certificate was also filed in the office of the Secretary of State of New York, April 16, 1886.

See Record of Testimony p. 69.

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## Complainant's Exhibit William O. Wyckoff and others. Contract
246 ## with the Standard Typewriter Manufacturing Co., April 16, 1886.

Memorandum of Agreement, made this 16th day of April, 1886, between William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, all of the City of New York, of the first part, and the "Standard Typewriter Manufacturing Company," a corporation organized and doing business under the laws of the State of New York, of the second part, witnesseth that

Whereas, The parties of the first part did heretofore enter into a certain agreement with E. Remington & Sons, dated the 22d day of March, 1886, a

copy of which is hereunto annexed, and which is 247
referred to and made a part of these presents; and

Whereas, It was the intention of the parties of the first part herein, at the time of the making and entering into of the said agreement, to form an incorporated company under the laws of the State of New York for the purpose of purchasing and taking the property and interests which were by said agreement conveyed to the parties of the first part herein, and they had already entered into arrangements and agreements with certain persons for the formation of such incorporated company, with the view of the said persons becoming stockholders in the same, and the parties of the first part really and in point of fact purchased the said property and in- 248
terests as *quasi* trustees, to purchase and hold the same until such time as the said incorporated company could be formed; and with the intention that so soon as the said incorporated company should be formed, to transfer and assign the said property and interests to the said incorporated company, subject to whatever covenants and obligations were or should be assumed by the parties of the first part herein, in and about the purchase of the said property and interests; and it was also the intention of the parties of the first part herein that when the said incorporated company should be formed to transfer and assign said property and interests to said incorporated company as of the 22d day of 249
March, the day on which the said agreement was delivered to take effect so far as the possession of the said property and interests is concerned on the morning of the 23d day of March, 1886; and that, in the meantime, the said property and interests should be held and worked by the parties of the first part herein for the benefit of the said incorporated company, the party of the second part herein; the party of the second part assuming and paying whatever disbursements and liabilities the parties of the first part herein should have or shall have made or incurred in the carrying out of the said intents and

250 purposes; and so that the party of the second part herein shall assume the possession and ownership of the said property and interests to all intents and purposes the same as though the said company had been in existence on the said 23d day of March, 1886; and had been the party of the second part in the said agreement of the 22d day of March, 1886, instead of the parties of the first part herein.

Now, therefore, with the view of carrying out the said intentions and agreements, and for the consideration of one hundred and ninety-six thousand nine hundred and fifty-four dollars by the party of the second part to the parties of the first part in hand paid, at or before the ensealing of these pre-
251 sents, the receipt of which is hereby confessed and acknowledged, and for the further consideration of whatever sum shall be found, upon a proper accounting, to be due from the party of the second part to the parties of the first part, growing out of the assumption of possession of the said property and interests on the 23d day of March, 1886, by the parties of the first part herein, in the quality and with the intents aforesaid and the working and operating of the said interests since that time to the date of these presents, to be paid by the party of the second part to the parties of the first part, the parties of the first part have sold, assigned, transferred and set over, and do by these presents sell,
252 assign, transfer and set over, unto the party of the second part, the following described franchises, rights, interests, goods, wares, merchandise and property, namely:

First, a certain agreement of license, made, executed and delivered by The Typewriter Company and James Densmore, as Trustees, &c., of the first part, and E. Remington & Sons, party of the second part, dated June 13th, 1881, and recorded in the Patent Office at Washington, on the 27th day of June, 1881, in Liber Y 26, at page 199, &c., together with all the rights, privileges, franchises, property and interests of every name and nature whatsoever,

secured to the party of the first part or intended so 253
to be.

Together, also, with whatsoever rights, interests or property still remain to the parties of the first part, in, of or by reason of another certain agreement, made and entered into on the 1st day of November, 1875, by and between E. Remington & Sons, of the first part, and The Typewriter Com pany, of the second part, which said agreement was recorded in the United States Patent Office on the 27th day of February, 1880, in Liber X 24, at page 217.

Second, all the right, title and interest of the parties of the first part, in, of, to and growing out 254
of two certain agreements in writing executed by G. W. N. Yost, and both bearing date the 28th day of October, 1878, the first of which was recorded in the United States Patent Office on the 9th day of November, 1879, in Liber W 24, at page 32; and the second of which was recorded on or about the 20th day of February, 1883, in Liber V 23, at page 130.

Third, certain Letters Patent of the United States, heretofore granted to Byron A. Brooks, dated April 30th, 1878, and numbered 202,923, and which were assigned to E. Remington & Sons, by written assignment dated January 17th, 1880, recorded in the United States Patent Office, April 13th, 1883, in Liber M 29, at page 371. Together with all the 255
right, title and interest of the parties of the first part in, of and to the said Letters Patent, and the inventions and improvements secured, or intended to be secured, thereby.

It being the intent of these presents to transfer and convey to the party of the second part by the parties of the first part, all the rights, privileges and franchises which the parties of the first part now have, hold or own in and about the manufacture, use and sale of Typewriting Machines acquired by the parties of the first part in and by the said agreement of march 22d, 1886; together with the right to the party of the second part to use and employ in

256 connection with the manufacture of Typewriting Machines the title "Standard Remington Typewriter;" to the exclusion of the use of the said title or term by the parties of the first part, or by any other person or persons, except in so far as the Typewriter Machines to which the said term may or shall be applied shall have been manufactured by the party of the second part, its successors or assigns.

Fourth, all special tools pertaining to the manufacture of Typewriters now owned by the parties of the first part, no matter where situated or with what machines connected, including all patterns and models at Ilion, Syracuse or elsewhere, and including
257 all cases, cupboards and drawers heretofore specially used for and in connection with the manufacture of Typewriters, and all boxes specially made or used for carrying Typewriter work, and the aligning benches and chairs in the aligning room at the works at Ilion, being the same property conveyed to the parties of the first part by E. Remington & Sons in and by said agreement of March 22d, 1886; and by the fourth item of article thereof.

Fifth, all material specially provided for the manufacture of Typewriting Machines which was on or about the works and premises of E. Remington & Sons on the 22d day of March, 1886, and all that has
258 been since purchased and all that is now on the premises leased by the parties of the first part from E. Remington & Sons, by lease dated March 22d, 1886, whether raw, unmanufactured, or in process of manufacture, and all machines in process of construction, and all machines which have been finished by the parties of the first part herein since the delivery of the said agreement of March 22d, 1886. It being intended by this clause to transfer all the said material which was on hand on the morning of the 23d day of March, 1886, and which was derived by the parties of the first part herein from E. Remington & Sons, all that has been since purchased and all Typewriting Machines which

were then in process of construction and which 259
been since finished, and all Typewriting Machines
which are in process of construction on the delivery
of these presents, so as to effectuate the intentions
hereinbefore expressed.

Sixth, all the following machines purchased by
the parties of the first part herein from E. Remington & Sons, and being at the time of said purchase
contained in the department of Brooks and of Jenne,
at the works of E. Remington & Sons, at Ilion,
New York:

12 milling machines, Lincoln pattern;
3 milling machines, Rack pattern;
3 Hand lathes; 260
2 1 spindle edging machines;
2 4 spindle geared drill presses, large;
1 4 spindle geared drill press, small;
2 3 spindle geared drill presses, small;
1 1 punch press, Fowler No. 2;
1 small bunch press;
1 large turret screw machine;
1 small gear cutter;
1 face milling 5 spindle machine;
1 grindstone and frame;
1 large turret screw machine;
1 Watertown shaper;
1 tapping machine;
1 punch press, Fowler No. 2; 261
1 punch press, Fowler No. 2½;
1 punch press, Styles & Parker No. 2;
1 punch press, Styles & Parker No. 1;
1 spindle edging machine, Remington;
2 6 spindle drilling machines;
1 4 spindle Pratt & Whitney drill press, large;
1 4 spindle Pratt & Whitney drill press, small;
7 milling machines, Lincoln pattern;
4 hand milling machines, Remington;
1 hand milling machine, double header, upright;
1 double head turning and grinding machine;
2 hand lathes;

262 1 screw cutting lathe, Ames;
1 screw cutting lathe, Putman;
1 back geared engine lathe, short bed;
1 grinding lathe;
1 milling machine index, Ames;
1 planer, four feet bed, Putman;
1 back geared single spindle jobbing drill;
2 grinding spindles on 1 bed;
1 grindstone;
3 small and 3 large tumbling barrels;
37 vices, bench four inch;
1 screw turning lathe, Putman;
1 cutter grinding machine;
2 hand milling machines.

263 Also all the following machines, being at the time of the said agreement of March 22d, 1886, in the department of Thomas Ringwood, on said premises, namely:

3 No. 2 Pratt & Whitney screw machines;
3 No. 4 Brown & Sharp screw machines:
1 small punch press;
1 hand milling machine;
1 tapping machine;
1 roll grinding machine;
1 small 2-spindle drill press;
2 polishing frames;
1 hand lathe.

264 Also all the following machines, being at the date of said agreement in the polishing room of Walter Baker, on the said premises, namely:

6 polishing frames;
1 bolt polishing lathe;
12 spindles;
6 pulleys,
50 wheels;
1 glue table and washing sink;
1 washing machine.

Together with such taps, dies, drills, reamers, counterbores and other tools as were acquired by the parties of the first part herein by the said agree-

ment of March 22, 1886, including all tools, forgings, 265
castings and materials of all description then in Jenne's room, being the third floor of building No. 9 in the said works of E. Remington & Sons, with the exception of such as pertain to the work and machinery in the northeast corner of said room, as stated in said agreement of March 22, 1886.

And the parties of the first part hereby assign and transfer to the party of the second part the covenants, promises and agreements contained in the said agreement of March 22, 1886, whereby E. Remington & Sons covenanted, promised and agreed that it would not thereafter engage in the manufacture of Typewriting Machines of any name or character for the period of ten years from the date of 266
the said agreement; together with all actions and rights of action arising or to arise from any breach of said covenants, promises and agreements, and the right to recover damages therefor or to enjoin the said E. Remington & Sons for any violation of the said agreement.

And the party of the second part, in consideration of the promises and one dollar, and other valuable considerations, to it in hand paid by the parties of the first part, does hereby promise and agree, to and with the parties of the first part, their executors and administrators, that it will at all times indemnify and save harmless the parties of the first part of, from and against any and all covenants, 267
promises and agreements to be by virtue of the said agreement of March 22, 1886, kept and performed from and after the execution and delivery of these presents and contained in or growing or arising out of the agreement of license bearing date June 13, 1881, and the agreement bearing date November 1, 1875, mentioned and described in the said agreement of March 22, 1886; and that it, the party of the second part, will take the place of the parties of the first part so far as the keeping and performing of the said promises and agreements is concerned and that it will keep and perform the same. And

that, in consideration of the covenants hereinbefore contained, or referred to, to the effect that the said E. Remington & Sons will not engage in the manufacture and sale of Typewriting Machines, and the transfer and assignment of the said covenants to the party of the second part herein, it will maintain and keep the said business and industry of manufacturing Typewriting Machines in the said Village of Ilion for a term not less than three years from the 22d day of March, 1866; and

Whereas, an agreement existed between E. Remington & Sons and the parties of the first part herein, whereby the sale of Typewriting Machines manufactured by E. Remington & Sons was conferred exclusively upon the said parties of the first part for a term of six years, or thereabouts, with certain stipulations on the part of the said E. Remington & Sons to supply the parties of the first part herein with Typewriting Machines, &c., which said agreement, by and in accordance with the terms of the said agreement of March 22, 1886, first herein mentioned, was abrogated and cancelled as between the said E. Remington & Sons and the parties of the first part herein. And, whereas, it was and is the intention of the parties of the first part herein, in purchasing the said Typewriter property, &c., from E. Remington & Sons, to retain the right of selling the Typewriting Machines as in and by the said agreement between E. Remington & Sons and the parties of the first part herein stipulated and agreed: it is hereby understood and agreed that the said agreement conferring upon the parties of the first part herein the exclusive sale of the said Typewriting Machines for a term of six years, or thereabouts, from the date of the said agreement in that regard, is hereby revived as between the parties hereto, and the parties of the first part shall have all the rights, privileges and enjoyments of the said contract and be subject to all the duties and obligations therein imposed as between the parties of the first part and the party of the second part herein as though the

said agreement had been originally made between 271
the parties of the first part and the party of the second part herein. And it is further intended, in addition to the stipulations in that regard herein contained, to provide for the exclusive sale of the said Typewriting Machines on the basis of the said agreement in that regard, by a separate instrument in writing between the parties hereto.

And the parties do hereby mutually covenant and agree to and with each other, that either party will, upon request of the other, at any time hereafter, further assurance make with reference to any of the matters and things herein contained, so as to more perfectly effectuate the purposes and intents of these presents. 272

And for the considerations aforesaid the parties of the first part have sold, assigned, transferred and set over, and do, by these presents, sell, assign, transfer and set over, unto the party of the second part a certain adendum agreement of license, made executed and delivered by James Densmore, Amos Densmore and David C. Roundy of the first part, and E. Remington & Sons of the second part, dated June 13, 1881, and recorded in the United States Patent Office on the 27th day of June, 1881, in Liber Y 26, page 208, of Transfers of Patents, which said adendum agreement of license was assigned by E. Remington & Sons to the parties of the first part herein by the said agreement of March 22, 1886, together with all the rights, privileges, franchises, property and interests of every name and nature whatsoever, secured thereby to the parties of the first part, or intended so to be. 273

And it is understood by these presents that the several covenants and agreements hereinbefore entered into by the parties hereto with reference to the agreement of license dated June 13, 1881, hereby transferred, are to apply to the said adendum agreement of license, as though they had been specially inserted herein with reference to the same.

274 It is also further understood and agreed by and between the parties that a certain bill or invoice for tin ordered by E. Remington & Sons from the N. & G. Taylor Company, of Philadelphia, and amounting to about one thousand dollars, be the same more or less, part of which had arrived on the 22d day of March, 1886, or was about arriving, and which was assumed by the parties of the first part herein in and by the said agreement of March 22, 1886, is to be assumed and paid for by the party of the second part herein.

And it is further understood and agreed between the parties hereto that it is the intention of these presents to transfer and vest in the party of the
275 second part all the rights, interests, property and effects of every name and nature whatsoever which the parties of the first part derived in and by the said agreement of March 22, 1886, between E. Remington & Sons and the parties of the first part herein; and subject to all the burdens, obligations, promises, covenants and agreements to be kept and performed by the parties of the first part herein and by the said agreement of March 22, 1886.

And whereas it is the intention, also, as hereinbefore expressed, of the parties hereto that the said property, rights, interests and effects shall vest in the party of the second part herein to all intents and purposes, the same as though the party of the
276 second part herein had been the party of the second part in the said agreement of March 22, 1886, so that the said property, rights, interests and effects should have vested in the party of the second part herein as of the morning of the 23d day of March, 1886, in order to effectuate such objects and intentions, it is further hereby understood and agreed that there shall be, as soon as may be, an accounting between the parties of the first part and the party of the second part herein with reference to whatever moneys the parties of the first part have paid out in and about the transfer of the said interests to them, the parties of the first part herein, in

and about the conducting and taking possession 277
and moving of any portion of the said property and effects and starting and carrying on the business of manufacturing typewriters and the purchase of materials therefor and the payment of labor and any other proper disbursements and expenses incurred or paid out, or liabilities incurred by the parties of the first part in and about the said matters and things, and the said sums of money shall be paid over by the party of the second part to the parties of the first part, and the said liabilities incurred by the parties of the first part shall be assumed by the party of the second part; and, on the other hand, the party of the second part shall be entitled to all the rights, benefits and advantages, profits and property and 278
interest which the parties of the first part have acquired or have made or possess in consequence of their taking and operating the said interests as aforesaid.

In witness whereof the parties have executed these presents in duplicate the day and year first above written.

W. O. WYCKOFF (Seal).
C. W. SEAMANS (Seal).
H. H. BENEDICT [SEAL],
Standard Typewriter Mfg. Co.,
[CORPORATE SEAL.] by W. O. Wyckoff,
Presdt. 279

280 STATE OF NEW YORK, } ss.:
County of Herkimer, }

On this 16th day of April, 1886, before me came William O. Wyckoff, to me personally known and known to be the President of the corporation, Standard Typewriter Manufacturing Company, who being by me duly sworn, did depose and say that he was the president of said corporation, that he knew the corporate seal of the said corporation-that the seal affixed to the foregoing instrument in writing was such corporate seal, that the same was thereunto affixed by order of the Board of Trustees of said corporation, and that he executed the said
281 written instrument as president of the said corporation by the like order.

And also, on this 16th day of April, 1886, before me came William O. Wyckoff, Clarence W. Seamans, and Henry H. Benedict to me personally known and known to be the individuals described in the within written instrument and who executed the same, and did severally and duly acknowledge that they executed the same for the uses and purposes therein mentioned.

THOS. RICHARDSON,

[NOTARIAL SEAL.] Notary Public, in and for said County.

282

STATE OF NEW YORK, } ss.:
Herkimer County Clerk's Office, }

I, ARTHUR T. SMITH, Clerk of the County of Herkimer, and also Clerk of the Supreme and County Court held therein, the same being Courts of Record, and having a common seal, do hereby certify that Thos. Richardson whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and herein written, was at the time of taking such acknowledgment a Notary Public in and for said County of Herkimer, dwelling in said county and sworn and duly authorized

to take the same, and that I am well acquainted 283
with his handwriting, and verily believe that the name subscribed to said certificate of proof or acknowledgment is his genuine signature, and that said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said County and Courts at Herkimer, this 9th day of Feby., 1887.

A. T. SMITH,
Clerk.

[SEAL.]

HER BRITANNIC MAJESTY'S CONSULATE GENERAL, New York. 284

I, WILLIAM LANE BOOKER, Esq., C. M. G., her Britannic Majesty's Consul General for the States of New York, New Jersey, Connecticut, Rhode Island and Delaware,

Do hereby certify, that I have reason to believe that the signature subscribed and seal affixed to the Certificate hereunto annexed are the true signature and seal of Thomas Richardson, who was on the day of the date of said certificate, a Notary Public in and for the State of New York, duly commissioned and sworn, to whose official acts faith and credit are due.

In witness whereof, I do hereunto set my hand 285
and seal of office at the City of New York, this eleventh day of February in the year of our Lord, one thousand eight hundred and eighty-seven.

[SEAL.] WM. LANE BOOKER.

[Stamp.]

286 **Complainant's Exh. Assignment of License William O. Wyckoff, et al, to Standard Typewriter Manufacturing Co., Apr. 16, 1886.**

Received for record, April 22, 1886, and recorded in Liber Z 34, page 119 of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

W. V. MONTGOMERY.

[SEAL.] Commissioner of Patents.

For value received, we, William O. Wyckoff, Clarence W. Seamans, and Henry H. Benedict, of
287 New York City, of the first part, have sold, assigned, transferred and set over, and do, by these presents, sell, assign, transfer and set over, unto the Standard Typewriter Manufacturing Company, a corporation, organized under the laws of the State of New York, of the second part, a certain agreement of license, in writing, bearing date the 13th day of June, 1881, executed by The Typewriter Company, and by James Densmore, as Trustee, parties of the first part, therein, and by E. Remington and Sons, parties of the second part therein, which said agreement of license was recorded in the United States Patent Office at Washington, on the 27th day of June, 1881, in Liber Y 26, at page 199, of
288 Transfers of Patents.

And for the same consideration, we, the parties of the first part, have sold, assigned, transferred and set over, and do, by these presents, sell, assign, transfer and set over, unto the said party of the second part, a certain addendum agreement of license, in writing, bearing date the 13th day of June, 1881, executed by James Densmore, Amos Densmore and Daniel C. Roundy, of the first part, and E. Remington & Sons, of the second part, which addendum agreement of license was recorded in the United States Patent Office at Washington on the 27th day of June, 1881, in Liber Y 26, page 208, of Transfers of Patents.

Together with all the rights, property, interests, 289
privileges and franchises owned, held or enjoyed by the parties of the first part in and by virtue of the said agreement of license and the said addendum agreement of license each and both of them.

To have and to hold the same to the party of the second part, its successors and assigns forever.

In witness whereof, we have hereunto subscribed our names and set our seals, this 16th day of April, 1886.

W. O. WYCKOFF. [SEAL]
C. W. SEAMANS. [SEAL]
H. H. BENEDICT, [SEAL]

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**Complainant's Ex. Assignment of Lease William O. Wyckoff et al. to Standard Typewriter Manufacturing Co., April 16, 1886.**

This Indenture, made this 16th day of April, 1886, by and between William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, of the City of New York, of the first part, and the Standard Typewriter Manufacturing Company, a corporation, organized under the laws of the State of New York, and having its principal place of business at 291
Ilion, in the County of Herkimer, State of New York, of the second part,

Witnesseth, That the parties of the first part, for and in consideration of the premises and of one dollar, to them in hand paid by the party of the second part, at or before the ensealing of these presents, have sold, assigned transferred and set over, and do by these presents, sell, assign, transfer and set over unto the party of the second part, a certain indenture of lease made by and between E. Remington & Sons, a corporation, organized and doing business under the laws of the State of New York,

292 of the first part, and William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, of the second part, bearing date the 22nd day of March, 1886, and recorded in the office of the clerk of Herkimer County on the 25th day of March, 1886, in book 129, on page 422.

Together with all the rights, interests, property, privileges, covenants and agreements in the said indenture of lease contained, to the full end of the term for which said lease was made and granted, with the option therein contained to be exercised by the parties of the first part herein to extend the same for three years longer, as in the said indenture of lease mentioned and contained; and subject to
293 all the conditions, covenants and agreements in the said lease contained to be performed by the parties of the second part therein, being the parties of the first part herein.

And, whereas, it is the intention of these presents and of the parties hereto, that the party of the second part herein shall take and hold the said indenture or lease as of the day of its date, the 22nd day of March, 1886, as though the said indenture of lease had been executed originally to the party of the second part herein, it is understood and agreed by and between the parties hereto that the party of the second part herein shall assume, bear,
294 pay and perform all the covenants, promises and agreements contained in the said indenture of lease to be performed by the parties of the second part therein as and from the 22nd day of March, 1886, and shall be entitled to all the benefits which have accrued from and after the said date of March 22nd, 1886.

And the party of the second part, for and in consideration of the premises and of one dollar to it in hand paid by the parties of the first part, at or before the ensealing of these presents, does hereby, for itself and its successors, covenant promise and agree to and with the parties of the first part

herein, that it will faithfully keep and perform all 295
the covenants and agreements contained in the said indenture of lease to be by the parties of the second part therein kept and performed, and that it will at all times indemnify and save harmless the parties of the first part herein of, from and against all covenants, promises and agreements in the said indenture of lease contained to be by the parties of the second part therein kept and performed, and from all damages, claims, liabilities, debts, dues, actions and causes of action, arising or growing out of any and all covenants, promises and agreements in the said lease contained to be performed by the parties of the second part therein.

In witness whereof, the parties hereto have executed these presents in duplicate, this 16th day of April, 1886. 296

W. O. WYCKOFF. [SEAL]
C. W. SEAMANS. [SEAL]
H. H. BENEDICT. [SEAL]

STANDARD TYPEWRITER MFG. CO.,
by W. O. WYCKOFF, President.

[SEAL]

STATE OF NEW YORK, }
County of Herkimer, } ss.:

297

On this 16th day of April, 1886, before me came William O. Wyckoff, to me personally known, and known to be the president of the corporation, Standard Typewriter Manufacturing Company, who, being by me duly sworn, did depose and say, that he was the president of said corporation, that he knew the corporate seal of the said corporation, that the seal affixed to the foregoing instrument in writing was such corporate seal, that the same was thereunto affixed by order of the Board of Trustees of said corporation, and that he executed the said written instrument as president of the said corporation by the like order.

298 And also on this 16th day of April, 1886, before me came William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, to me personally known and known to be the individuals described in the within written instrument and who executed the same and did severally and duly acknowledge that they executed the same for the uses and purposes therein mentioned.

THOMAS RICHARDSON,
Notary Public in and for the
County of Herkimer.

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**Complainant's Ex. Assignment Brooks Patent William O. Wyckoff et al. to Standard Typewriter Mfg. Co., April 16, 1886.**

Received for record April 22, 1886, and recorded in Liber Z34, page 121, of Transfers of Patents.

[SEAL] In testimony whereof I have caused the seal of the Patent office to be hereunto affixed.

M. N. MONTGOMERY,
Commissioner of Patents.

300 For value received, we, William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, of New York City, have sold, assigned, transferred and set over. and do, by these presents, sell, assign, transfer and set over, unto the Standard Typewriter Manufacturing Company, a corporation, organized under the laws of the State of New York, certain United States Letters Patent, heretofore issued to Byron A. Brooks, bearing date April 20th, 1878, and numbered 202,923, together with the inventions and improvements secured thereby, and all the rights, privileges and advantages granted and secured by said Letters Patent. To have and to hold the same to the said Standard Typewriter

Manufacturing Company, its successors and assigns 301
forever.

In witness whereof, we have hereunto subscribed our names and set our seals, this 16th day of April, 1886.

W. O. WYCKOFF, [SEAL]
C. W. SEAMANS, [SEAL]
H. H. BENEDICT, [SEAL]

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**Complainant's Ex. Order changing name of Standard Typewriter Manufacturing Co. to Remington Standard Typewriter Mfg. Co.** 302

UNITED STATES OF AMERICA.

STATE OF NEW YORK.

By

JOHN T. McDONOUGH,

Secretary of State and Custodian of the Great Seal thereof.

It is hereby certified, That J. B. H. Mongin was, on the day of the date of the annexed Certificate and Attestation, Deputy Secretary of State of the 303
State of New York, and duly authorized by the laws of said State to make such Attestation and Certificate and to perform the duties belonging to the Secretary of State in making such Attestation and Certificate, in like manner as said Secretary of State; that the said Certificate and Attestation are in due form and executed by the proper officer; that the seal affixed to said Certificate and Attestation is the seal of office of the Secretary of State of the State of New York; that the signature thereto of the said Deputy Secretary of State is in his own proper handwriting, and is genuine; and that

304 full faith and credit may and ought to be given to his official acts; and further, that the Secretary of State is the Custodian of the Record of Corporation Certificate, so certified and attested, and Custodian of the Great Seal of said State, hereto affixed.

In testimony whereof, the Great Seal of
[SEAL] of the State is hereunto affixed.

Witness my hand at the City of Albany, the twelfth day of January, in the year of our Lord one thousand eight hundred and ninety nine.

JOHN T. McDONOUGH,
Secretary of State.

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306

At an Adjourned Special Term of the Supreme Court, held at the Court House, in the Village and County of Herkimer, N. Y., on the 30th day of November, 1888. 307

Present, Hon. George A. Hardin,
Justice.

SUPREME COURT,

COUNTY OF HERKIMER.

In the matter of the application of the "Standard Typewriter Manufacturing Company," an incorporation, to change its corporate name, 308

Upon reading and filing the petition of the "Standard Typewriter Manufacturing Company," by its President, William O. Wyckoff, duly verified by its said President, and dated and verified on the 27th day of November, 1888, and notice of this application, and due proof to the satisfaction of the Court that such notice has been published as required by law, and it appearing to the satisfaction of the Court 309 that the application herein is made in pursuance of a resolution of the Trustees of the said corporation applying, the Standard Typewriter Manufacturing Company; and it appearing also to the satisfaction of the Court that there is no reasonable objection to such corporation changing its name;

And, after hearing Mr. Thomas Richardson, Attorney and of Council for the said corporation, applicant, no one appearing to oppose:

It is ordered, That the "Standard Typewriter Manufacturing Company" may, and it is hereby authorized to, change its name and to assume the

310 corporate name of "Remington Standard Typewriter Manufacturing Company."

It is further ordered, That a copy of this order shall be filed in the office of the Secretary of State, and with the County Clerk of the City and County of New York, and with the County Clerk of the County of Herkimer, it appearing to the satisfaction of the Court that the said corporation has a business office in the said City and County of New York and in the County of Herkimer, and in no other place or places, and that it be published at least once in each week for four weeks, in the "Ilion Citizen," a newspaper printed and published in the Village of Ilion, in the said County of Herkimer,

311 and in "The Star," a newspaper printed and published in the City and County of New York.

And it is further ordered, That from and after the first day of January, 1889, the requirements of this order having been complied with, the said corporation, applicant, be known by and use the corporate name, "Remington Standard Typewriter Manufacturing Company."

And it is further ordered, That this order and the moving papers herein be filed and this order entered in the County Clerk's Office of the County of Herkimer.

Enter, GEORGE A. HARDIN,
Justice of the Supreme Court.

312

HERKIMER COUNTY, Clerk's Office. } ss.

I, ARTHUR T. SMITH, Clerk of said County, do hereby certify that I have compared the annexed copy of Order entered November 30, 1888, with the original thereof, now on file and entered in this office and that the same is a true copy thereof, and of the whole of said original.

Witness my hand and seal of office, this 30th day of November, 1888.

[Seal.] A. T. SMITH, Clerk.

[Endorsed.] 313

[Certified Copy of Order.]

Change of Name to "Remington Standard Typewriter Manufacturing Company.

Herkimer Special Term.

November 30, 1888.

Granted at within term and ordered entered in Herkimer County.

A. T. SMITH, Clerk.

STATE OF NEW YORK, } 314
Office of Secretary of State. }

Filed and Recorded Dec. 1, 1888, 9 A. M.

DIEDRICH HILLERS,
Deputy Secretary of State.

STATE OF NEW YORK. }
Office of Secretary of State. } ss.

I have compared the preceding with the certified copy of the Order changing the name of Standard Typewriter Manufacturing Company to Remington Standard Typewriter Manufacturing Company, filed 315
and recorded in this office on the first day of December, 1888, at 9 A. M., and do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this sixth day of January, one thousand eight hundred and ninety-nine.

J. B. H. MONGIN,
[Seal] Deputy Secretary of State.

316 **Complainant's Ex. Assignment Yost Agreements Wm. O. Wyckoff et al. to Standard Typewriter Manufacturing Co., April 16, 1886.**

Received, for record, April 22, 1886, and recorded in Liber Z 34, page 121, of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

M. N. MONTGOMERY,
[SEAL] Commissioner of Patents.

For value received, we. William O. Wyckoff,
317 Clarence W. Seamans and Henry H. Benedict, of New York City, have sold, assigned, transferred and set over, and do by these presents, sell, assign, transfer and set over, unto the Standard Typewriter Manufacturing Company, a corporation, organized under the laws of the State of New York, two certain agreements or assignments, made, executed and delivered to us by G. W. N. Yost, both bearing date October 28th, 1878, the one recorded in the United States Patent Office at Washington, on the 8th day of November, 1879, in Liber W 24, at page 32; and the other recorded in said Patent Office on or about February 19th, 1883, in Liber V 23, at page 130, together with all the rights, inter-
318 ests and privileges which we had or have under the said agreements, either and both of them.

To have and to hold to the Standard Typewriter Manufacturing Company, its successors and assigns forever.

In witness whereof, we have hereunto subscribed our names and set our seals this 16th day of April, 1886.

W. O. WYCKOFF. [SEAL]
C. W. SEAMANS. [SEAL]
H. H. BENEDICT. [SEAL]

319

**Complainant's Ex. Supplementary and Confirmatory Order Changing Name of Corporation Standard Typewriter Mfg. Co. to Remington Standard Typewriter Mfg. Co.**

At an adjourned Special Term of the Supreme Court, held at the Chambers of Hon. George A. Hardin, Justice of the Supreme Court, in the Village of Little Falls, County of Herkimer, N. Y., on the 29th day of December, A. D. 1888.

320

Present, Hon. GEORGE A. HARDIN,
*Justice.*

SUPREME COURT,

COUNTY OF HERKIMER.

In the matter of the application of the "Standard Typewriter Manufacturing Company," an incorporation, to change its corporate name.

321

An order having been heretofore, namely, on the 30th day of November, 1888, duly granted by this Court, in the words and letters following to wit:

322 At an adjourned Special Term of the Supreme Court, held at the Court House, in the Village and County of Herkimer, N. Y., on the 30th day of November, 1888.

Present, Hon. GEORGE A. HARDIN,
*Justice.*

SUPREME COURT,

COUNTY OF HERKIMER.

323 In the matter of the application of "The Standard Typewriter Manufacturing Company," an incorporation, to change its corporate name.

Upon reading and filing the petition of the Standard Typewriter Manufacturing Company by its President, William O. Wyckoff, duly verified by its said president, and dated and verified on the 27th day of November, 1888, and notice of this application, and due proof to the satisfaction of the Court that such notice has been published as required by law, and it appearing to the satisfaction of the Court that the application herein is made in pursuance of
324 a resolution of the Trustees of the said corporation, applying The Standard Typewriter Manufacturing Company; and it appearing also to the satisfaction of the Court that there is no reasonable objection to such corporation changing its name;

And, after hearing Mr. Thomas Richardson, attorney and of counsel for the said corporation, applicant, no one appearing to oppose;

It is ordered that The Standard Typewriter Manufacturing Company may, and it is hereby authorized to, change its name and to assume the corporate name of Remington Standard Typewriter Manufacturing Company.

It is further ordered, that a copy of this order 325
shall be filed in the office of the Secretary of State, and with the County Clerk of the City and County of New York, and with the County Clerk of the County of Herkimer, it appearing to the satisfaction of the Court that the said corporation has a business office in the said City and County of New York and in the County of Herkimer, and in no other place or places, and that it be published at least once in each week for four weeks in the "Ilion Citizen," a newspaper printed and published in the village of Ilion, in the said County of Herkimer, and in the "Star," a newspaper printed and published in the City and County of New York.

And it is further ordered, that from and after the 326
1st day of January, 1889, the requirements of this order having been complied with, the said corporation, applicant, be known by and use the corporate name, Remington Standard Typewriter Manufacturing Company.

And it is further ordered, that this order and the moving papers herein be filed and this order entered in the County Clerk's office of the County of Herkimer.

Enter GEORGE A. HARDIN,
Justice, Supreme Court.

(Endorsed)

Herkimer Spl. Term, Nov. 30, 1888; granted at 327
within term and ordered entered in Herkimer County.

A. T. SMITH, Clerk.

And the same having been duly entered in the County Clerk's office of the County of Herkimer, on the 30th day of November, 1888.

Now, on reading and filing the affidavit of Thomas Richardson, verified, December 28, 1888, together with the affidavits of publication thereto annexed, and forming part thereof, whereby it appears to the satisfaction of the Court that a certified copy of said order was, on the 30th day of Novem-

328 ber, 1888, duly filed with the County Clerk of the County of Herkimer, and that a certified copy of the said order was duly filed with the County Clerk of the City and County of New York, and also in the office of the Secretary of State, on the 1st day of December. 1888; and that the said order has been published at least once in each week for four weeks, in the "Ilion Citizen," a newspaper printed and published in the village of Ilion, in the said County of Herkimer, and in the "Star," a newspaper printed and published in the City and County of New York;

And it further appearing to the satisfaction of the Court that the requirements of the said order

329 have been complied with;

Now, on motion of Mr. Thomas Richardson, attorney and of counsel for the applicant, it is

Ordered, adjudged and decreed, That the said Corporation, the "Standard Typewriter Manufacturing Company," be known from and after the 1st day of January, 1889, by, and use the corporate name, "Remington Standard Typewriter Manufacturing Company."

And it is further ordered, that this order and the moving papers herein be filed, and this order entered in the County Clerk's office of the County of Herkimer.

Enter

330 GEORGE A. HARDIN,
Justice Supreme Court,
5th Judicial District,
Residing in Little Falls, N. Y.

HERKIMER COUNTY, } ss. 331
Clerk's Office }

I, Duane M. Richardson, Clerk of said County, do hereby certify that I have compared the annexed copy of order in the annexed entitled action, with the original thereof, now on file in this office, and that the same is a true copy thereof, and of the whole of said original order.

Witness my hand and seal of office, this 17th day of February, 1899.

[SEAL AND STAMP.]

D. M. RICHARDSON, Clerk.

I, Irving R. Devendorf, sole and presiding Judge 332
of the County Court of Herkimer County aforesaid, the same being a Court of Record, do hereby certify, that the foregoing certificate and attestation is in due form of law and executed by the proper officer authorized to execute the same.

Witness my hand at Herkimer, N. Y., this 20th day of February, 1899.

IRVING R. DEVENDORF,
Herkimer County Judge.

STATE OF NEW YORK, } ss.
Herkimer County Clerk's Office, }

I, Duane M. Richardson, Clerk of the County of Herkimer and of the County Court of Herkimer 333
County aforesaid, the same being a Court of Record and having a common seal, do hereby certify that the said Irving R. Devendorf, whose name is signed to the last foregoing Certificate, is the sole and presiding Judge of the County Court of Herkimer County aforesaid, and is duly commissioned and qualified to act as such Judge as aforesaid.

In testimony whereof, I have hereunto
[SEAL] set my hand and affixed the seal of the said County and said Court this 20th day of February, 1899.

D. M. RICHARDSON,
Clerk of Herkimer County.

334 **Complainant's Ex. The Standard Typewriter Co. Articles of Association filed New York Co. Dec. 7, 1891.**

No. 447.

THE PEOPLE OF THE STATE OF NEW YORK,

BY THE GRACE OF GOD FREE AND INDEPENDENT.

To all to whom these presents shall come or may concern, greeting:

Know ye, That we, having examined the records and filed in the office of the Clerk of the County of New York, and Clerk of the Supreme Court of said
335 State for said County, do find a certain Certificate of Incorporation there remaining, in the words and figures following, to wit:

Filed and recorded Dec. 9th, 1891, 11 h. 3 m.

[SEAL]

STATE OF NEW YORK, }
City and County of New York, } ss.:

We, the undersigned, all of whom are citizens and residents of this State, desiring to become a corporation for the purposes hereinafter set forth, pursuant to the provisions of "The Business Cor-
336 poration Law," do hereby certify:

First: The name of the proposed corporation is to be "The Standard Typewriter Company."

Second: The object and nature of the business for which said corporation is to be formed are the manufacture and sale of typewriting machines and typewriting supplies and appliances, stationery, etc., and the location of its business is to be in the City and County of New York.

Third: The amount and the description of the capital stock are to be as follows: Five hundred thousand dollars ($500,000) of common stock.

Fourth: The number of shares of which the capital stock shall consist is five thousand (5,000) shares of the par value of one hundred dollars ($100) each. 337

Fifth: The location of its principal business office is to be in the City, County and State of New York.

Sixth: Its duration is to be fifty (50) years.

Seventh: The number of its Directors is to be five (5).

Eighth: The names and Post-Office addresses of its Directors for the first year are as follows:

| Names. | Post-Office Addresses. |
|---|---|
| John W. Hussey, | 415 Willoughby Ave., B'klyn 338 |
| Henry D. Donnelly, | 206 Broadway, New York. |
| Frank Rudd, | 102 Broadway, New York. |
| Benjamin F. Blair, | 102 Broadway, New York. |
| John N. Blair, | 102 Broadway, New York. |

Ninth: The Post-Office addresses of the subscribers, and a statement of the number of shares of stock which each agrees to take in the corporation are subscribed to this certificate.

In witness whereof, we, the subscribers, have made, signed and acknowledged this certificate in duplicate, and have hereunto subscribed our respective names, Post-Office addresses and the number of shares of stock which each of us agrees to take 339 in said corporation.

Dated this 7th day of December, 1891.

| Names. | Post-Office Addresses. | No. of Shares. |
|---|---|---|
| John W. Hussey, | Brooklyn, N. Y., | 5 |
| Henry D. Donnelly, | 206 Broadway, N. Y. | 5 |
| Frank Rudd, | Brooklyn, N. Y. | 5 |
| Benjamin F. Blair, | 102 Broadway, N. Y. | 5 |
| John N. Blair, | 195 Greene Ave., B'klyn, N. Y. | 5 |
| W. O. Wyckoff, | 327 Broadway, N. Y. | 850 |
| C. W. Seamans, | 327 Broadway, N. Y. | 850 |
| H. H. Benedict, | 327 Broadway, N. Y. | 850 |

340 STATE OF NEW YORK,
City and County of New York. } ss.

On this 7th day of December, A. D. 1891, before me personally came John W. Hussey, Henry D. Donnelly, Frank Rudd, Benjamin F. Blair, John N. Blair, William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, to me known and known to me to be the persons described in and who made and signed the foregoing certificate, and severally duly acknowledged to me that they made, signed and executed the same for the uses and purposes therein set forth.

CORNELIUS J. EARLEY,
341 Notary Public,
New York County.

STATE OF NEW YORK,
City and County of New York. } ss.

Benjamin F. Blair, Frank Rudd and John N. Blair, being severally duly sworn, each for himself, deposes and says that he is a director named in the foregoing certificate of incorporation; that the persons who have signed such certificate have subscribed in the aggregate to at least one-tenth of the capital stock of the proposed corporation, and have
342 paid ten per cent. of such subscriptions in cash to the directors named in the certificate.

BENJ. F. BLAIR.
JOHN N. BLAIR.
FRANK RUDD.

Severally sworn to before me this
7th day of December, A. D. 1891. }
CORNELIUS J. EARLEY,
Notary Public,
New York County.

**Duplicate.** 343

$625.00.

TREASURER'S OFFICE, STATE OF NEW YORK.
Albany, December 8, 1891.

Received from The Standard Typewriter Company six hundred and twenty-five dollars, in full of tax of one-eighth of one per centum upon the capital stock of $500,000 of the above-named company for the privilege of organization pursuant to Chapter 143, Laws of 1886.

GEO. B. CHURCH,
Deputy Treasurer.

Deputy Comptroller.

Filed and recorded 9th Dec., 1891, 11 H 3 M. 344

All which we have caused by these presents to be exemplified and the seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. M. L. Stover, a Justice of the Supreme Court for the County of New York, the fourteenth day of July, in the year of our Lord one thousand eight hundred and ninety-nine, of our Independence the one hundred and twenty-fourth.

[SEAL.] WM. SOHMER,
Clerk.

I, Martin L. Stover, a presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of New York, do hereby cer- 345
tify that William Sohmer, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of New York and Clerk of said Supreme Court for said county, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated New York, July 14, 1899,

M. L. STOVER,
Justice of the Supreme Court of the
State of New York.

346 STATE OF NEW YORK, City and County of New York. } ss.

I, William Sohmer, Clerk of the Supreme Court of said State in and for the County of New York, do hereby certify that Hon. M. L. Stover, whose name is subscribed to the preceding certificate, is Presiding Justice at a Special Term of the Supreme Court of said State in and for the County of New York, duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court this 14th day of July, 1899.

347 (SEAL.) WM. SOHMER,
[STAMP.] Clerk.

Same. Certificate of incorporation filed and recorded in the office of the Secretary of the State of New York, December 8, 1891.

See Record of Testimony, p. 77.

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## Complainant's Ex. Agreement of Consolidation forming the Corporation, Wyckoff, Seamans & Benedict.

$2,843.75.

348 TREASURER'S OFFICE, STATE OF NEW YORK, Albany, May 19th, 1892.

Received from Wyckoff, Seamans & Benedict, Two thousand Eight hundred and Forty-three 75/100 Dollars in full of tax of one-eighth of one per centum upon the taxable Capital Stock of $2,275,000 of the above named Company, for the privilege of organization, pursuant to Chapter 143, Laws of 1886.

GEO. B. CHURCH,
Deputy Treasurer.

CALVIN J. HEUSON,
Deputy Comptroller.

This agreement made the 2nd day of April, 1892, 349
between the Board of Directors of The Standard Typewriter Company, party of the first part, and the Board of Directors of The Remington Standard Typewriter Manufacturing Company, party of the second part, under the corporate seals of said companies,

Witnesseth, That

Whereas, The Standard Typewriter Company, said party of the first part, is a corporation organized under the laws of the State of New York, for the purpose of carrying on the business of manufacturing and selling typewriters and typewriting supplies and appliances, stationery, etc., and 350

Whereas, The Remington Standard Typewriter Manufacturing Company, said party of the second part, is a corporation organized under the laws of the State of New York, for the purpose of engaging in the manufacture and sale of typewriting machines, parts of, and attachments therefor, and any and all articles to be used or sold in connection therewith; and

Whereas it is believed to be for the mutual advantage and best interests of the stockholders thereof that said corporations should be merged and consolidated into a single corporation pursuant to the provisions of Sections XIII. and XIV. of the Business Corporation Law. 351

Now, therefore, for the purpose of effecting such merger and consolidation, and in consideration of the mutual covenants herein contained, the parties hereto do hereby merge and consolidate said two corporations into a single corporation under the corporate name hereinafter specified, and do hereby agree upon and prescribe the terms and conditions of such consolidation and the mode of carrying the same into effect, which terms and conditions and mode of carrying the same into effect they mutually covenant and agree to observe to wit:

352 First.—That the name of the corporation formed by such consolidation shall be "Wyckoff, Seamans & Benedict.

Second.—That the number of the directors who shall manage the affairs of said new corporation shall be five.

Third.—That the names and post-office addresses of the directors of said new corporation for the first year are as follows:

| Names of Directors. | Post-Office Address. |
|---|---|
| 1. William O. Wyckoff, | 327 Broadway, New York. |
| 2. Clarence W. Seamans, | 327 Broadway, New York. |
| 3. Henry H. Benedict, | 327 Broadway, New York. |
| 353 4. Thomas Richardson, | Ilion, N. Y. |
| 5. Benjamin B. Van Deusen, | Ilion, N. Y. |

Fourth.—That the term of existence of said new corporation shall be fifty years.

Fifth.—That the names of the towns and counties in this State in which the chief operations of said new corporation are to be carried on are the town of Ilion, in the County of Herkimer, and the City and County of New York; but said new corporation will also, through branch offices, conduct the business of selling the machines, supplies, stationery, etc., manufactured or dealt in by it, in the princi-
354 pal cities of this State.

Sixth.—That the name of the town and county in this State in which the principal place of business of said new corporation is to be situated, is in the town of Ilion, in the County of Herkimer.

Seventh.—That the amount of the capital stock of said new corporation is to be Three Millions of Dollars which is not larger than the fair aggregate value of the property, franchises and rights of said constituent corporations, parties thereto.

Eighth.—That the number of shares into which such capital stock is to be divided is Thirty Thou-

sand (30,000) shares of the par value of one hundred 355
dollars each.

Ninth.—That the manner of distributing such capital stock among the holders thereof shall be as follows: Sixteen thousand three hundred and sixty-four shares of said capital shall go to and be distributed *pro rata* among the stockholders of the said Standard Typewriter Company, the party of the first part hereto, and certificates therefor shall be issued to said stockholders of said Standard Typewriter Company *pro rata* according to the numbers of shares of the stock of said Standard Typewriter Company held by them respectively, and upon the presentation and surrender of their 356
respective outstanding certificate or certificates of stock in said Standard Typewriter Company, and thirteen thousand six hundred and thirty-six shares of said capital stock shall go to, and be distributed *pro rata* among the stockholders of the said Remington Standard Typewriter Manufacturing Company, party of the second part hereto, and certificates therefor shall be issued to said last mentioned stockholders *pro rata* according to the number of shares of the stock of said Remington Standard Typewriter Manufacturing Company held by them respectively, upon the presentation and surrender of their respective outstanding certificate or certificates of stock in said last mentioned Company. 357

Tenth.—That said new corporation proposes to carry on a part of its business out of this State, to wit, at all the principal cities of the United States, and at various cities of foreign countries.

In testimony whereof, the said parties of the first and second parts have, pursuant to resolutions duly adopted by their respective Boards of Directors, authorized and directing the same to be done, caused these presents to be signed, in duplicate, by their respective Presidents, and attested by their respective Secretaries, and their respective corpor-

358 ate seals to be hereto affixed, the day and year first above written.

THE STANDARD TYPEWRITER CO.
By JOHN W. HUSSEY,
[Seal.] President.
Attest: JOHN N. BLAIR,
Secretary.

THE REMINGTON STANDARD TYPEWRITER MANUFACTURING COMPANY.
By W. O. WYCKOFF,
[L. S.] President.
Attest: C. W. SEAMANS,
Secretary.

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STATE OF NEW YORK, }
City and County of New York. } ss.

On this eleventh day of April, 1892, personally appeared before me John N. Blair, to me personally known, who being by me duly sworn said that he resided at Brooklyn in the State of New York; that he was the Secretary of the Standard Typewriter Company, mentioned in the foregoing agreement of consolidation and merger, dated the 2nd day of April, 1892; that he knew the corporate seal of said Company, and that the first of the corporate seals affixed to the foregoing instrument was such seal; that he was acquainted with John W. Hussey
360 and knew him to be the President of the said Standard Typewriter Company; that he was familiar with his handwriting and knew the signature subscribed to the foregoing instrument, purporting to be the signature of John W. Hussey, to be genuine; and he further said that said corporate seal was so affixed and said instrument was so subscribed by said John W. Hussey as President and by deponent as Secretary of the Standard Typewriter Company by order of the Board of Directors of said Company.

In witness whereof, I have hereunto set my hand the day and year last above written.

LEWIS W. VAN ANTWERP,
[L. S.] Notary Public, Kings & N. Y. Cos.

STATE OF NEW YORK. } ss. 361
City and County of New York. }

On this 13th day of April, 1892, personally appeared before me Clarence W. Seamans, to me personally known, who being by me duly sworn, said that he resided at Brooklyn, in the State of New York; that he was the Secretary of the Remington Standard Typewriter Manufacturing Company mentioned in the foregoing agreement of consolidation and merger, dated the second day of April, 1892; that he knew the corporate seal of said Company, and that the second of the corporate seals affixed to the foregoing instrument was such seal; that he was acquainted with William O. Wyckoff, 362
and knew him to be the President of the said Remington Standard Typewriter Manufacturing Company; that he was familiar with his handwriting and knew the signature subscribed to the foregoing instrument, purporting to be the signature of said William O. Wyckoff, to be genuine; and he further said that said corporate seal was so affixed and said instrument was so subscribed by said William O. Wyckoff as President and by deponent as Secretary of the Remington Standard Typewriter Manufacturing Company by order of the Board of Directors of said Company.

In witness whereof, I have hereunto set my hand the day and year last above written. 363

LEWIS W. VAN ANTWERP,
[L. S.] Notary Public,
Kings and N. Y. Cos.

364 STATE OF NEW YORK, City and County of New York. } ss.

Clarence W. Seamans, being duly sworn, says: I am the Secretary of the Remington Standard Typewriter Manufacturing Company, a corporation organized under the laws of this State for the purpose of carrying on a business which a corporation organized under the Business Corporation Law might carry on; and as such Secretary I caused notice of a meeting of the stockholders of said Company, called to be held at its office, at the village of Ilion, in the County of Herkimer, on the 4th day of May, 1892, at 12 o'clock noon, which notice specified the time, place and object of such meeting, (and of which
365 notice a true copy is set forth in the affidavit of the Secretary of said meeting hereto annexed) to be served upon each and every stockholder of said Company more than thirty days before the date of said meeting in the manner prescribed by Section 14 of the said Business Corporation Law, and also to be published as in said section prescribed.

CLARENCE W. SEAMANS.

Sworn to before me } May 16th, 1892. }

LEWIS W. VAN ANTWERP, Notary Public, Kings and N. Y. Cos.

366 STATE OF NEW YORK, City and County of New York. } ss.

Henry H. Benedict being duly sworn, says: I am one of the stockholders of the Remington Standard Typewriter Manufacturing Company and attended a meeting of the stockholders of said Company held at its office in the Village of Ilion on the 4th day of May, 1892. In the absence of the Secretary of said Company, I was chosen and acted as Secretary of said meeting. The following is a true copy of the proceedings of said meeting, to wit:

"Minutes of a meeting of the stockholders of the Remington Standard Typewriter Manufacturing

Company held at its office at the Village of Ilion, 367
on the 4th day of May, 1892, at 12 o'clock noon, pursuant to the following notice: Notice—To the Stockholders of the Remington Standard Typewriter Manufacturing Company:—

"Notice is hereby given that a meeting of the Stockholders of the Remington Standard Typewriter Manufacturing Company will be held at the office of said Company in the Village of Ilion, in the County of Herkimer, on the 4th day of May, 1892, at 12 o'clock noon, the object of which meeting is to consider and vote upon an agreement, then and there to be submitted to said Stockholders, providing for the consolidation of said Remington Standard Typewriter Manufacturing Company with the 368
Standard Typewriter Company, another corporation existing under the laws of this State, pursuant to the provisions of Sections 13 and 14 of the Business Corporation Law, and to transact such further business, if any, as may properly come before said meeting.

Dated New York, April 1, 1892.

By order of the Board of Trustees,

(Signed) W. O. WYCKOFF,
President.

C. W. SEAMANS,
Secretary.

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Present in person, William O. Wyckoff, Henry H. Benedict, Thomas Richardson and A. C. Seamans; and by proxy, Clarence W. Seamans, Edward J. Delehanty and H. N. Lockwood, being the owners of all of the shares of said Company.

On motion of Mr. Richardson, W. O. Wyckoff was chosen chairman and Henry H. Benedict secretary.

The Chairman stated the object of the meeting, and submitted for consideration the agreement mentioned in said notice, of which agreement appears in the minutes a meeting of the Board of Directors of said Company, held on the 2nd day March, 1892.

Mr. Richardson moved that the said agreement be approved and called for a vote by ballot.

The motion having been duly seconded, the chair appointed Messrs. Benjamin Van Deusen and Albert F. Lewis tellers and inspectors to receive and count the votes, who duly took the usual oath of inspectors.

A ballot having been had and the votes counted, the tellers reported that 450 votes had been cast, all of which were for the approval of said agreement and none against it; and the chair thereupon announced that the motion had been carried unanimously and that the said agreement was unanimously approved by stockholders owning all of the stock of this Company.

The meeting then adjourned.

HENRY H. BENEDICT,
Secretary."

And deponent further says: The agreement to which this sworn statement is attached is the agreement which was thus submitted to be voted upon and approved by the stockholders of said Company. The entire capital stock of said Company consists of $225,000 divided into 450 shares of $500 each, and at all meetings of stockholders of said Company each stockholder is entitled, by the By-Laws of said Company, to one vote for each share of stock held by him. At said meeting said agreement was approved by the vote by ballot of the stockholders owning the entire stock of said Company.

HENRY H. BENEDICT.

Sworn to before me,
May 16, 1892.

LEWIS W. VAN ANTWERP,
Notary Public, Kings and New York Cos.

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State of New York,
City and County of New York, } ss. 373

John N. Blair, being duly sworn, says: I am the Secretary of the Standard Typewriter Company, a corporation organized under the laws of this State for the purpose of carrying on a business which a corporation organized under the Business Corporation Law might carry on; and I was the Secretary of a meeting of the stockholders of said Company which was held on the 5th day of May, 1892, at 102 Broadway, New York City, at 2 o'clock in the afternoon, pursuant to a notice specifying the time, place and object of such meeting, a copy of which is set forth in the minutes of said meeting, which 374
notice was duly served upon each and every stockholder of said Company more than thirty days before said meeting, in the manner prescribed by Section 14 of said Business Corporation Law, and was also published as in said Section prescribed. All the stockholders of said Company were present at said meeting in person. The following is a true copy of the proceedings of said meeting:

"Minutes of a meeting of the stockholders of the Standard Typewriter Company, held at 102 Broadway, in the City of New York, on the 5th day of May, 1892, at 2 o'clock in the afternoon, pursuant to the following notice: Notice. To the Stockholders of the Standard Typewriter Company: 375

"Notice is hereby given that a meeting of the Stockholders of the Standard Typewriter Company will be held at 102 Broadway, in the City of New York, on the 5th day of May, 1892, at 2 o'clock in the afternoon, the object of which meeting is to consider and vote upon an agreement, then and thereto be submitted to said stockholders providing for the consolidation of said Standard Typewriter Company with the Remington Standard Typewriter Manufacturing Company, another corporation existing under the laws of this State, pursuant to the provisions of Sections 13 and 14 of the Business

376 Corporation Law, and to transact such further business, if any, as may properly come before said meeting.

Dated New York, April 2, 1892.

By order of the Board of Directors,

J. W. HUSSEY,
President.

JOHN N. BLAIR.
Secretary.

Present, William O. Wyckoff, Henry H. Benedict, Clarence W. Seamans, John W. Hussey, Henry D. Donnelly, Frank Rudd, Benjamin F. Blair and
377 John N. Blair, being all of the stockholders of said Company.

Pursuant to Article VII. of the By-Laws the president, Mr. Hussey, occupied the chair. On motion of Mr. Rudd, John N. Blair was chosen secretary of the meeting.

The chairman stated the object of the meeting, and submitted for consideration the agreement mentioned in said notice, which appears in the minutes of a meeting of the Board of Trustees of this Company held April 2d, 1892.

Mr. Benj. F. Blair moved that said agreement be approved and called for a vote by ballot.

The motion having been duly seconded, the chair
378 appointed Messrs. Henry D. Donnelly and Henry H. Benedict tellers to receive and count the votes, and directed that each stockholder who favored the approval of the agreement should write on his ballot his name and the words "For approval of agreement," together with the number of votes cast by him, and each stockholder who was opposed should write on his ballot his name and the words "Against approval of agreement," together with the number of votes cast by him.

A ballot having been had and the votes counted, the tellers reported that 5,000 votes had been cast, of which 5,000 were for the approval of said agreement and none against it; and the chair thereupon

announced that the motion had been carried unanimously, and that the said agreement was unanimously approved by stockholders owning all of the stock of this Company. 379

The meeting then adjourned.

JOHN N. BLAIR,
Secretary.

Deponent further says: The agreement to which this sworn statement is attached to the agreement which was submitted to, voted upon and approved by the stockholders of said Company. The entire capital stock of said Company consists of 5,000 shares of $100 each, the holders of which are entitled by the by-laws of said Company to one vote for each share of stock held by them. At said meeting said agreement was approved by the vote, by ballot, of stockholders owning the entire capital stock of said Company. 380

Sworn to before me }
May 9th, 1892. }

JOHN N. BLAIR.

LEWIS W. VAN ANTWERP,
Notary Public,
Kings and N. Y. Counties.

STATE OF NEW YORK, }
Herkimer County Clerk's Office, } ss. 381

I, Duane M. Richardson, Clerk of the County of Herkimer, do hereby certify that I have compared the annexed copy of Agreement and Proceedings with the original copy thereof now on file and recorded in this office, and that the same is a true copy thereof and of the whole of said original.

Witness my hand and seal of office this 17th day of March, 1899.

[SEAL.] D. M. RICHARDSON,
[STAMP.] Clerk.

382 I, Irving R. Devendorf, sole and presiding Judge of the County Court of Herkimer County aforesaid, the same being a Court of Record, do hereby certify that the foregoing certificate and attestation is in due form of law and executed by the proper officer authorized to execute the same.

Witness my hand at Herkimer, N. Y., this 17th day of March, 1899.

IRVING R. DEVENDORF,
[STAMP.] Herkimer County Judge.

STATE OF NEW YORK, } ss.
383 Herkimer County Clerk's Office, }

I, Duane M. Richardson, Clerk of the County of Herkimer, and of the County Court of Herkimer County aforesaid, the same being a court of record, and having a common seal, do hereby certify that the said Irving R. Devendorf, whose name is signed to the last foregoing certificate, is the sole and presiding Judge of the County Court of Herkimer County and is duly commissioned and qualified to act as such Judge as aforesaid.

In testimony whereof I have hereunto set my hand and seal of the said County and said Court at Herkimer, N. Y., this 17th day of March, 1899.

384 [SEAL.] D. M. RICHARDSON,
[STAMP.] Clerk.

CONSOLIDATION OF CORPORATIONS.

Laws of State of New York, 1890, Chap. 567, Secs. 13, 14, 15, and 16.

Sec. 13. Corporations may consolidate. Agreement therefor.

Any two or more corporations organized under the laws of this State for the purpose of carrying on any kind of business of the same or of a similar nature, which a corporation organized under this chapter might carry on, may consolidate such corporations into a single corporation, as follows: The respective boards of directors of such corporations may enter into and make an agreement, 386
under their respective corporate seals, for the consolidation of such corporations prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors who shall manage its affairs, not less than five nor more than thirteen, the names and post-office address of the directors for the first year, the term of its existence, not exceeding fifty years, the name of the town or towns, county or counties, in which its operations are to be carried on, the name of the town or city and county in this State in which its principal place of business is to be situated, the amount of its capital 387
stock, which shall not be larger in amount than the fair aggregate value of the property, franchises and rights of such corporations, and the number of shares into which the same is to be divided, the manner of distributing such capital stock among the holders thereof, and if such corporations, or either of them, shall have been organized for the purpose of carrying on any part of its business in any place out of this State, and such new corporation shall propose to carry on any part of its business out of this State, the agreement shall so state, with such other particulars as they may deem necessary.

388 Sec. 14. Agreement to be submitted to stockholders; stock of those objecting appraised and paid for. Such agreement shall be submitted to the stockholders of each of such corporations, at a meeting thereof to be called upon notice of at least thirty days, specifying the time, place and object thereof, and addressed to each at their last known post-office address, and deposited in the post-office, postage pre-paid, and published for at least three successive weeks in one of the newspapers in each of the counties of this State in which either of such corporations shall have its place of business, and if such agreement shall be approved at each of such meetings of the respective stockholders separately,
389 by the vote by ballot of the stockholders owning at least two-thirds of the stock, the same shall be the agreement of such corporations; and a sworn copy of the proceedings of such meetings, made by the secretaries thereof, respectively, and attached thereto, shall be presumptive evidence of the holding and action of such meetings. Such agreement and verified copy of proceedings of such meetings shall be made in duplicate, one of which shall be filed in the Office of the Secretary of State, and the other in the Office of the Clerk of the County where the principal business office of the new corporation is to be situated in this State, and thereupon such corporations shall be merged into
390 the new corporation specified in such agreements, to be known by the corporate name therein mentioned and the provisions of such agreement shall be carried into effect as therein provided. If any stockholder, not voting in favor of such agreement to consolidate, shall at such meeting, or within twenty days thereafter, object to such consolidation and demand payment for his stock, such stockholder or such new corporation, if the consolidation takes effect at any time thereafter, may at any time within sixty days after such meeting apply to the Supreme Court at any special term thereof held in the District in which any County is situated in

which such new corporation may have its place of 391
business, upon at least eight days' notice to the new corporation, for the appointment of three persons to appraise the value of such stock and the court shall appoint three such appraisers, and designate the time and place of their first meeting, with such directions in regard to their proceedings, as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholders. The Court may fill any vacancy in the Board of Appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge 392
their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such new corporation, and another to such stockholder if demanded; the charges and expenses of the appraisers shall be paid by the new corporation. When the new corporation shall have paid the amount of such appraisal, as directed by the Court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation, and such stock may be held or disposed of by such new corporation.

Sec. 15. Powers of consolidated corporations. Such new corporation and addition to the general 393
powers of corporation shall enjoy the rights, franchises and privileges possessed by each of the corporations so consolidated, subject to the restrictions, liabilities, duties and provisions contained in this article, so far as the same may be applicable to the purposes for which it shall have been organized and expressed in the agreement for consolidation, and may prosecute or carry on any kind of business, which each of the consolidating corporations was authorized by law to conduct.

Sec. 16. Property, etc., transferred to new corporations. Upon such consolidation and organiza-

tion of such new corporation, all and singular the rights, privileges, franchises and interests of every kind, belonging to or enjoyed by the corporations so consolidated, and every species of property, real, personal and mixed, and things in action thereunto belonging, mentioned in such agreement of consolidation, shall be deemed to be transferred and vested in, and may be enjoyed by, such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, and all rights of property, privileges, franchises and interests in the same manner and to the same extent as if the several corporations so consolidated had continued to retain the title and transact the business of such corporations, and the title to real and personal estate and rights and privileges acquired and enjoyed by either of the corporations shall not revert or be impaired by such consolidation, or anything relating thereto.

Laws of New York, 1892, Vol. 2, Chap. 691, Secs. 8, 9, 10, 11, 12. Amending Act of 1890.

Sec. 8. Consolidation of Corporations. Any two or more corporations organized under the laws of this State for the purpose of carrying on any kind of business of the same or of a similar nature, which a corporation organized under this chapter might carry on, may consolidate such corporations into a single corporation, as follows: The respective Boards of Directors of such corporations may enter into and make an agreement, under their respective corporate seals, for the consolidation of such corporations prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors who shall manage its affairs, not less than three, nor more than thirteen, the names and post office addresses of the directors for the first year, the term of its existence, not exceeding fifty years, the name of the town or towns, county or counties, in which its operations are to be carried on, the

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name of the town or city and county in this State 397
in which its principal place of business is to be situated, the amount of its capital stock, which shall not be larger in amount than the fair aggregate value of the property, franchises and rights of such corporations, and the number of shares into which the same is to be divided, the manner of distributing such capital stock among the holders thereof, and of such corporations, or either of them, shall have been organized for the purpose of carrying on any part of its business in any place out of this State, the agreement shall so state, with such other particulars as they may deem necessary.

Sec. 9. Submission of consolidation agreement to stockholders. Such agreement shall be submitted 398
to the stockholders of each of such corporations, at a meeting thereof to be called upon notice of at least two weeks, specifying the time, place and object thereof, and addressed to each at his last known post office address and deposited in the post office, postage prepaid and published for at least two successive weeks in one of the newspapers in each of the counties of this State in which either of such corporations shall have its place of business, and if such agreement shall be approved at each of such meetings of the respective stockholders separately, by the vote by ballot of the stockholders owning at least two-thirds of the stock, the same 399
shall be the agreement of such corporations, and a sworn copy of the proceedings of such meetings made by the secretaries thereof, respectively, and attached thereto, shall be presumptive evidence of the holding and action of such meetings. Such agreement and verified copy of proceedings of such meetings shall be made in duplicate, one of which shall be filed in the office of the Secretary of State, and the other in the office of the Clerk of the County where the principal business office of the new corporation is to be situated in this State, and thereupon such corporations shall be merged into the new corporation specified in such agreements,

400 to be known by the corporate name therein mentioned, and the provisions of such agreement shall be carried into effect as therein provided. If any stockholder, not voting in favor of such agreement to consolidate, shall at such meeting, or within twenty days thereafter, object to such consolidation and demand payment for his stock, such stockholder or such new corporation, if the consolidation takes effect at any time thereafter, may at any time within sixty days after such meeting apply to the Supreme Court at any special term thereof held in the district in which any county is situated in which such new corporation may have its place of business, upon at least eight days' notice to the
401 new corporation, for the appointment of three persons to appraise the value of such stock, and the Court shall appoint three such appraisers and designate the time and place of their first meeting with such directions in regard to their proceedings as shall be deemed proper and also direct the manner in which payment for such stock shall be made to such stockholder. The Court may fill any vacancy in the Board of Appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time
402 of such dissent, and deliver one copy to such new corporation, and another to such stockholder if demanded; the charges and expenses of the appraisers shall be paid by the new corporation. When the new corporation shall have paid the amount of such appraisal, as directed by the Court, such stockholder shall cease to have any interest in such stock and in the corporate property of such corporation, and such stock may be held or disposed of by such new corporation.

Sec. 10. Powers of Consolidated Corporations. Such new corporation in addition to the general powers of corporations shall enjoy the rights, fran-

chises and privileges possessed by each of the corporations so consolidated, subject to the restrictions, liabilities, duties and provisions contained in this chapter so far as the same may be applicable to the purposes for which it shall have been organized and expressed in the agreement for consolidation and may prosecute or carry on any kind of business which each of the consolidating corporations was authorized by law to conduct. 403

Sec. 11. Transfer of property of old corporations to consolidated corporations. Upon such consolidation and organization of such new corporation, all and singular the rights, privileges, franchises and interests of every kind belonging to or enjoyed by the corporations so consolidated, and every species of property, real, personal and mixed, and things in action thereunto belonging, mentioned in such agreement of consolidation, shall be deemed to be transferred and vested in, and may be enjoyed by, such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, and all rights of property, privileges, franchises and interests in the same manner and to the same extent as if the several corporations so consolidated had continued to retain the title and transact the business of such corporations, and the title to real and personal property and rights and privileges acquired and enjoyed by either of the corporations shall not revert or be impaired by such consolidation, or anything relating thereto. 404 405

Sec. 12. Rights of Creditors of Old Corporations. The rights of creditors of any corporation that shall so be consolidated shall not in any manner be impaired, nor any liability or obligation for the payment of any money due or to become due to any person or persons, or any claim or demand for any cause existing against any such corporation or against any stockholder thereof be released or impaired by any such consolidation; but such new corporation shall succeed to and be held liable to pay and discharge all such debts and liabilities, of each of the corporations consolidated in the same

manner as if such new corporation had itself in-
406 curred the obligation or liability to pay such debt or damages, and the stockholders of the respective corporations consolidated shall continue, subject to all the liabilities, claims and demands existing against them as such, at or before the consolidation; and no action or proceeding then pending before any court or tribunal in which any corporation that may be so consolidated is a party, or in which any such stockholder is a party, shall abate or be discontinued by reason of such consolidation, but may be prosecuted to final judgment, as though no consolidation had been entered into; or such new corporation may be substituted as a party in place of any corporation so consolidated, by order of the court in
407 which such action or proceeding may be pending.

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**Complainant's Ex. Certificate of Registration of name Remington as a Trade Mark.**

DEPARTMENT OF THE INTERIOR.

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify, That the annexed is a true copy from the Records of this office of the Trade-
408 Mark registered by Standard Typewriter Manufacturing Company, October 23, 1888, Number 15960, for Typewriting Machines.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 9th day of January, in
[SEAL] the year of our Lord, one thousand eight hundred and ninety-nine, and of the Independence of the United States of America, the one hundred and twenty-third.

C. H. DUELL,
[STAMP] Commissioner of Patents.

No. 15960.

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THE UNITED STATES OF AMERICA.

To all whom it may concern:

This is to certify, That by the records of the United States Patent Office it appears that the Standard Typewriter Manufacturing Company, of New York, a corporation organized under the laws of the State of New York) did, on the 23d day of August, 1888, deposit in said office for Registration, fac-similes of a certain *Trade-Mark* for Typewriting Machines, and the date of the receipt thereof was duly noted and recorded; that on the 23d day of August, 1888, it deposited therewith a statement and a written declaration under the oath of C. W. Seamans, an 410
officer of said corporation, copies of all of which are hereto annexed; and the said corporation having made the payment of a fee of twenty-five dollars and complied with the regulations in such cases prescribed by the Commissioner of Patents, and in all other respects complied with an Act of Congress approved March 3, 1881, entitled "An Act to authorize the Registration of Trade-Marks and protect the same," the said fac-similes, statement and declaration were duly recorded, and the said Trade-Mark has been duly registered in the said Patent Office, this 23d day of October, one thousand eight hundred and eighty-eight, and protection therefor will remain in force for thirty years from said date, 411
unless sooner terminated in accordance with Section 5 of said act.

In testimony whereof, the seal of the Department of the Interior is hereto affixed,
[SEAL] this twenty-third day of October, 1888, and of the Independence of the United States, the one hundred and thirteenth.

Given under my hand, at Washington, D. C.

BENTON J. HALL,
Commissioner of Patents.

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## TRADE MARK.

STANDARD TYPEWRITER MANUFACTURING COMPANY.

Typewriting Machines.

No. 15960. Registered Oct. 23, 1888.

REMINGTON.

Witnesses:
JAMES F. DUHAMEL,
HORACE A. DODGE.

Registrant:

413 STANDARD TYPEWRITER M'F'G CO.,
by DODGE & SONS, Att'ys.

## UNITED STATES PATENT OFFICE.

STANDARD TYPEWRITER MANUFACTURING COMPANY, OF NEW YORK, N. Y.

Trade Mark for Typewriting Machines.

Statement and Declaration of Trade-Mark No. 15,960, registered October 23, 1888.

Application filed August 23, 1888.

414

007,791.

## Statement.

415

*To all whom it may concern:*

Be it known that the Standard Typewriter Manufacturing Company, a corporation organized under the laws of the State of New York, and having its principal place of business in the City of New York, has adopted for its use a trade mark for machinery, of which the following is a full, clear and exact description.

The trade-mark of said company consists of the word "Remington." This has generally been arranged as shown in the accompanying fac-simile; but its arrangement and the form of type in which it is printed may be varied without altering the 416
character of the trade-mark, the essential feature of which is the word "Remington."

The trade-mark has been continuously used by said corporation since about March, 1886, and by its predecessors (E. Remington & Sons, whose entire right, title and interest in the typewriting business it now holds by purchase) since the fore part of 1880.

The class of merchandise to which this trade-mark is appropriated is machinery, and the particular description of goods comprised in such class on which it is used by the said company is typewriting machines. It is usually affixed to the machines by 417
printing, or by any suitable transferring or decalcomanie process.

The trade-mark is also applied to the letter-heads and bill-heads used in carrying on the business of the company.

STANDARD MANUFACTURING CO.,
by C. W. SEAMANS,
Secretary.

Witnesses:
W. FRANK BOGART,
H. B. WILSON.

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## Declaration.

STATE OF NEW YORK, County of New York. } ss.

C. W. Seamans, being duly sworn, deposes and says that he is secretary of the corporation the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that said corporation has at this time a right to the use of the trade-mark therein described; that no other person, firm or corporation has a right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to de-
419 ceive; that it is used by said corporation in commerce between the United States and foreign nations or Indian tribes, and particularly with England, and that the description and fac-similes presented for record truly represent the trade-mark sought to be registered.

C. W. SEAMANS.

Sworn and subscribed before me this 21st day of August, 1888.

(L. S.) I. C. SEAMANS, Notary Public.

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**Complainant's Ex.—Assignment Trade Mark Remington.** 421

DEPARTMENT OF THE INTERIOR.

UNITED STATES PATENT OFFICE.

*To all persons to whom these presents shall come, greeting:*

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Remington Standard Typewriter Manufacturing Company, May 20, 1892, and recorded in Liber, P 46, page 401.

Said record has been carefully compared with the original and is a correct transcript of the whole thereof. 422

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 16th day of January, in the (SEAL.) year of our Lord one thousand eight hundred and ninety-nine. and of the Independence of the United States of America the one hundred and twenty-third.

C. H. DUELL,
(STAMP.) Commissioner of Patents.

Whereas, the Standard Typewriter Manufacturing Company, a corporation duly created and organized under the laws of the State of New York, registered a trade-mark in the United States Patent Office on the 23d day of October, 1888, numbered 15,960, which trade-mark consists of the word "Remington." 4.3

Whereas, said Standard Typewriter Manufacturing Company, by proceedings duly had under the laws of the State of New York, thereafter changed its corporate name to Remington Standard Typewriter Manufacturing Company.

Whereas, Remington Standard Typewriting Manufacturing Company has sold and is duly authorized to assign and convey all its right, title and interest in and to said trade-mark to Wyckoff, Seamans & Benedict, a corporation duly organized under the laws of the State of New York.

424 Now, therefore, for and in consideration of one dollar and other good and valuable consideration paid, the receipt of which is hereby acknowledged, said Remington Standard Typewriter Manufacturing Company has sold, assigned and conveyed, and by these presents does sell, assign and convey to said corporation, Wyckoff, Seamans & Benedict, its successors and assigns, all its right, title and interest in and to said trade-mark, consisting of the word "Remington," registered in the United States Patent Office on the 23d day of October, 1888, numbered 15,960, the same to be held and enjoyed by said corporation, Wyckoff, Seamans & Benedict, its successors and assigns, to the full end of the term
425 for which said trade-mark is, or may be registered, as fully and entirely as the same would have been held and enjoyed by Remington Standard Typewriter Manufacturing Company if this assignment and sale had not been made.

And for the above named considerations, said Remington Standard Typewriter Manufacturing Company hereby sells, assigns and sets over to said corporation, Wyckoff, Seamans & Benedict, its successors and assigns, all its right, title and interest in and to any damages or profits, or both, actions or causes of actions, which have accrued, or which may hereafter accrue to said Remington Standard Typewriter Manufacturing Company on account of
426 the use, unlawful use or infringement of said trade-mark by any person or persons, corporation or corporations.

In witness whereof, said Remington Standard Typewriter Manufacturing Company has hereunto caused its corporate seal to be affixed and these presents to be subscribed by its president and secretary, this 20th day of May, A. D. 1892.

REMINGTON STANDARD TYPEWRITER M'F'G. CO.,

[SEAL] by W. O. WYCKOFF, President.

Attest:

C. W. SEAMANS, Secretary.

STATE OF NEW YORK, }
City and County of New York, } ss. 427

On this twentieth day of May, 1892, before me personally appeared Clarence W. Seamans, to me personally known, who being duly sworn, did depose and say:

That he is the secretary of Remington Standard Typewriting Manufacturing Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said C. W. Seamans acknowledged said instrument to be the free act and deed of said corporation. 428

I. CLARK SEAMANS,
[NOTORIAL SEAL.] Notary Public,
Kings County, N. Y.
Certificate filed in N. Y. County.

Recorded August 29, 1892.

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**Complainant's Ex. Brooks' Patent.**

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, GREETING: 429

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of the Letters Patent granted Byron A. Brooks, April 30, 1878, No. 202,923, for Improvements in Typewriting Machines.

IN TESTIMONY WHEREOF, I, W.E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 12th day of March, in the year of our Lord, one thousand eight hundred and ninety-two, and of the Independence of the United States, the one hundred and sixteenth.

W. E. SIMONDS,
[SEAL] Commissioner.

430

THE UNITED STATES OF AMERICA.

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Byron A. Brooks of New York, N.Y. has presented to the Commissioner of Patents a petition praying for the grant of Letters Patent for an alleged new and useful improvement in Type-writing machines, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such case made and provided; and

WHEREAS, Upon due examination made the said
431 claimant is adjudged to be justly entitled to a patent under the laws:

NOW, THEREFORE, these Letters Patent are to be granted unto the said Byron A. Brooks, his heirs or assigns, for the term of seventeen years from the thirtieth day of April, one thousand eight hundred and seventy-eight, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this thirtieth day of April, in the year of our Lord, one thousand
432 eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and second.

A. BELL,

[SEAL] Acting Secretary of the Interior.

Countersigned:

ELLIS SPEAR,

Commissioner of Patents.

(Copy patent hereto affixed.)

# UNITED STATES PATENT OFFICE. 433

BYRON A. BROOKS, OF NEW YORK, N. Y.

## IMPROVEMENT IN TYPE-WRITING MACHINES.

Specification forming part of Letters Patent No. 202,923, dated April 30, 1878; application filed December 30, 1875.

*To all whom it may concern:*

Be it known that I, BYRON A. BROOKS, of New 434
York, in the county of New York and State of New York, have invented certain Improvements in Type-Writing Machines, of which the following is a specification:

The main object of my invention is to produce a machine which, without having duplicate keys, and type-bars, will print both capital and small letters, so that the depression of each key will cause the printing of an upper or lower case letter, as may be desired. The improvements are, however, applicable for printing any other two characters by one key.

The invention consists in the combination of type-bars, each having two or more letters or characters, with a vibratory platen, which may be adjusted instantly to receive the impression of either letter required. 435

It is obvious that the construction and arrangement of the details may be varied without departing from the limits of my invention, which covers, broadly, the idea of combining, in such manner as to have a vibratory movement in relation to each other, a platen and a series of type-bars, each of which carries an upper and a lower case letter, so that by means of the one key either character may be printed at will.

436 In the accompanying drawings I have shown the construction which I consider the best, a rotary platen, such as now used in machines in the market, being arranged to vibrate in its supporting-frame.

Figure 1 represents a top-plan view of my machine; Fig. 2, a vertical cross-section of the same; Fig. 3, a diagram, illustrating the relation of the type-bar and platen and the movement of the latter; Fig. 4, a face or plan view of the end of the type-bar.

A represents the frame of the machine; B, the cylindrical platen, mounted in a sliding frame, C, and arranged to rotate and to move endwise, as
437 usual, in order to give the required movement to the paper; D, the type-bars, pivoted to the under side of the frame, around an opening therein, and arranged to strike at a common point or center, as usual; and E, the keys or finger-pieces, connected one with each bar, for the purpose of operating the same, the above parts being all constructed and arranged in the same general manner as usual, and provided with the usual details and adjuncts well known to those familiar with this class of machines. The type-bars, however, instead of being provided, as usual, with a single type or letter, are each provided with two, one a capital and the other the corresponding small letter, as clearly shown in
438 Figs. 2, 3, and 4, the two being arranged side by side, and in such relation to the platen as to strike it at right angles to its transverse direction. The platen, instead of having fixed bearings in the frame C, is mounted in a secondary inside frame, *a*, arranged to slide forward and backward in the the frame C, so that by moving it to and fro the platen may be brought over and caused to receive the impression from the one or the other of the two type on each type-bar, as is clearly represented by Fig. 2. When the frame and roller are in one position the machine will print capitals, and when they are in the other position it will print small letters.

A handle, H, is connected with the roller-frame for the purpose of drawing it forward, and a spiral spring, I, arranged to push it backward, the latter being the position in which it ordinarily stands, and in which it causes the printing of small or lower-case letters. 439

It is obvious that, if desired, the spring I may be omitted, and the rod H alone used; or that, instead of the rod H, a lever or other equivalent device may be arranged, to be operated by the hand or foot to vibrate the platen.

When the machine is in operation the spring holds the roller back, and the manipulation of the keys causes the printing of the small body letters in the usual manner; and then, when the capitals are required, the roller is simply drawn forward, and the same keys depressed as for the printing of the corresponding small letters. Thus it will be seen that without duplicating the keys or type-bars, at a trifling expense, without increasing perceptibly the complication of the parts, and without increasing the bulk of the machine, I adapt it for printing both styles of letters, as may be required. 440

It is obvious that the manner of moving the platen may be varied; that, instead of moving the platen, the entire series of type-bars may be moved; and also, that, instead of having the large and small letters on each bar, two or more characters of any other kind may be used. 441

I am aware that a vibrating platen has before been described, and also that type-bars are shown in connection therewith having several letters thereon; but in such case the letters were all of one kind—that is, all upper-case letters; and, moreover, said type-bars, instead of being arranged to strike or print at a common center, were arranged to print side by side at different points, thereby necessitating a complicated and irregular movement of the platen back and forth along the line of printing, in order to print the letters in their usual

442 or proper positions. In that case the object was to print a single alphabet with a reduced number of keys, while the object of my invention is to print two or more alphabets or sets of characters with a single set of keys of the usual number.

I am aware that swinging type-bars, a hinged sliding paper carriage, and mechanism for feeding the carriage and for advancing the paper thereon have been hitherto employed in machines of this class, and therefore I disclaim said features, and all other features shown in the drawings except such as are distinctly claimed.

Having thus described my invention, what I claim is—

443 1. A type-bar, for use in a type-writing machine, carrying an upper and a lower case letter, substantially as and for the purpose set forth.

2. The combination, in a type-writer, of a type-bar carrying an upper an a lower case letter with a platen arranged to vibrate in a line transverse to the line of printing, whereby either of said letters may be printed in line at will, substantially as described.

3. The combination of a series of type-bars carrying upper and lower case letters, the letters of each set being arranged to strike or print at a common center, with a platen arranged to vibrate transversely to the line of printing, as set forth.

444

4. The combination of a series of type-bars, each provided with an upper and lower case letter, with a series of keys for operating the same, and a platen arranged to move in line with the printing, and also at right angles thereto, substantially as described.

5. The sliding frame C, having the transversely-sliding frame *a*, with the platen B mounted therein, and provided with the rod H or equivalent device, for controlling the transverse movements of the platen, substantially as described.

6. In a type-writing machine, the combination of a swinging type-bar mounted on a fixed pivot, and

carrying an upper and a lower case type, with a 445
movable platen, arranged so that it may be adjusted to receive at a given point the impression of either one of said types at will, substantially as shown.

BYRON A. BROOKS.

Witnesses:

G. W. N. YOST,
M. E. MCALLISTER.

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**Complainant's Ex. Assignment of Brooks Patent No. 202,923 to Wyckoff, Seamans & Benedict.** 446

Received for record August 29, 1892, and recorded in Liber E 47, page 48, of Transfers of Patents.

In testimony whereof, I have caused the
[SEAL] seal of the Patent Office to be hereunto affixed.

W. E. SIMONDS,
Commissioner of Patents.

Whereas, Letters Patent of the United States were granted to Byron A. Brooks, then of the City and County of New York, on the 30th day of April, 1878, No. 202,923, for improvements in typewriting 447
machines.

Whereas, said Letters Patent and the inventions and improvements therein described and claimed, afterwards, by mesne assignments became duly and wholly vested in Remington Standard Typewriter Manufacturing Company, a corporation then duly organized and existing under the laws of the State of New York.

And whereas, Wyckoff, Seamans & Benedict, a corporation duly organized and existing under the laws of the State of New York, is desirous of acquiring all the right, title and interest of said Remington Standard Typewriter Manufacturing

448 Company in and to said Letters Patent granted to said Brooks, as aforesaid, and in and to any and all claims for damages and profits for past infringement of said Letters Patent.

Now, therefore, in consideration of one dollar and other good and valuable consideration to said Remington Standard Typewriter Manufacturing Company paid by said corporation, Wyckoff, Seamans & Benedict, the receipt of which is hereby acknowledged, said Remington Standard Typewriter Manufacturing Company has sold, assigned and set over and by these presents does hereby sell, assign and set over unto said corporation, Wyckoff, Seamans & Benedict, its successors and assigns, all its right,
449 title and interest in and to said Letters Patent No. 202,923, granted to said Byron A. Brooks on the 30th day of April, 1878, and the invention and improvements therein described and claimed, the same to be held and enjoyed by said corporation, Wyckoff, Seamans & Benedict, its successors and assigns, for its own use and benefit and for the use and benefit of its successors and assigns, to the full end of the term for which said letters patent are or may be granted, including any reissues or extensions thereof.

And said Remington Standard Typewriter Manufacturing Company, for a like consideration also hereby sells, assigns and sets over to said corporation,
450 Wyckoff, Seamans & Benedict, its successors and assigns, all its right, title and interest in and to any and all contracts, licenses and agreements of every name and nature heretofore made by the said Remington Standard Typewriter Manufacturing Company, or by its assignors, with other parties for the use of said invention and improvements, or any part thereof, the same to be held, used and enjoyed by said corporation, Wyckoff, Seamans & Benedict, its successors and assigns, as fully and entirely as the same would have been held and enjoyed by said Remington Standard Typewriter Manufacturing Company, had this sale and assignment not been made.

And the said Remington Standard Typewriter 451
Manufacturing Company hereby authorizes and empowers said corporation, Wyckoff, Seamans & Benedict, its successors and assigns, to collect, receive and hold for its own use and benefit all royalties, license fees and sums of money, which are now due and owing, or which may hereafter become due and owing under any contracts, licenses or agreements, as aforesaid.

And for the consideration aforesaid, said Remington Standard Typewriter Manufacturing Company does hereby sell, assign, transfer and set over unto said corporation, Wyckoff, Seamans & Benedict, all its rights, claims and demands for profits and damages for the unlawful use or past infringement of 452
said Letters Patent No. 202,923, against any and all persons, firms and corporations, and all rights of action and causes of action, both in law and in equity, which said Remington Standard Typewriter Manufacturing Company now has, or is entitled to, or which it had or was entitled to sue for or recover at any time prior to the date of the execution of these presents, against any persons, firms or corporations, for, or on account of the use of said invention or the infringement of said Letters Patent in the manufacture, use or sale of the improvements described and claimed in said Letters Patent.

To have and to hold, the same to said corporation, Wyckoff, Seamans & Benedict, its successors and 453
assigns for its and their use and benefit forever.

In witness whereof, said Remington Standard Typewriter Manufacturing Company has by its President and Secretary executed these presents and affixed its corporate seal thereto this 22d day of July, 1892.

REMINGTON STANDARD TYPEWRITER MANUFACTURING CO.,

[SEAL] By W. O. WYCKOFF,
President.

Attest:
C. W. SEAMANS,
Secretary.

454

STATE OF NEW YORKK, City and County of New York. } ss.

On this 22d day of July, 1892, before me personally came Clarence W. Seamans, Secretary of Remington Standard Typewriter Manufacturing Company, of the City of Brooklyn, with whom I am personally acquainted, who being by me duly sworn, said:

That he resided in the City of Brooklyn, New York; that he was the Secretary of Remington Standard Typewriter Manufacturing company; that he knew the corporate seal of the said company; that the seal affixed to the foregoing assignment
455 was such corporate seal; that it was so affixed by order of the Board of Directors of said company; and that he signed his name thereto, by the like order as Secretary of the said company.

And the said Clarence W. Seamans further said that he was acquainted with William O. Wyckoff, and knew him to be the President of said company; that the name of the said company and the signature of the said William O. Wyckoff subscribed to said assignment were in the genuine handwriting of the said William O. Wyckoff, and were thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Clarence W. Seamans.

456 CLARENCE W. SEAMANS.

I. CLARK SEAMANS,
Notary Public.

[NOTARIAL SEAL] Kings Co., N. Y.
Certificate filed in N. Y. Co.

**Complainant's Ex. Remington-Sholes Notice, June 16, 1894.** 457

W. O. Wyckoff, Pres. H. H. Benedict, Vice-Pres.
I. C. Seamans, Sec'y and Treas. C. W. Seamans, Gen'l Mgr.

REMINGTON STANDARD TYPEWRITER.

Fine Linen Papers and Typewriter Supplies of every kind. Send for Sample Book.

Trade Mark. New York, Boston, Philadelphia, Washington, Baltimore, Chicago, Buffalo, Rochester, St. Paul, St. Louis, Indianapolis, Milwaukee, Minneapolis, Denver, Kansas City, Cleveland, Cincinnati, Paris, France, London, England, Manchester.

WYCKOFF, SEAMANS & BENEDICT, NEW YORK. 458
327 Broadway.

Our goods are sold in all the principal cities of the world.

Cable Address: Wrypeach, New York.

June 16, 1894.

Remington-Sholes Typewriter Company,

To the President and the Officers and Directors thereof:

Gentlemen:—

We have authoritative information that you have recently organized a corporation in the State of Illinois under the name of the "Remington-Sholes Typewriter Company," and therefore you are hereby notified that we claim the exclusive right to the use of and the exclusive property in the names "Remington" and "Sholes" when used together, or singly, or in combination, or separately with the word "company" or "corporation," or any other word or words. 459

We object to and protest against your use of said corporate name, "Remington-Sholes Typewriter Company," and protest against your manufacturing, or selling, advertising for sale, or offering for

460 sale, any typewriters or typewriting machines, or parts thereof, or any mechanism, devices, apparatus, materials, or supplies, pertaining to typewriting machines, or any goods, wares or merchandise whatsoever, under the name or designation, "Remington" or "Sholes" or "Remington-Sholes Typewriter Company," or under any name or designation of which the word "Remington" or the word "Sholes" shall be a part.

Being apprised of our rights in the premises, we trust that you will see the propriety of changing your corporate name and of using one which will not create confusion or trespass upon our exclusive rights above mentioned.

461 Yours very respectfully,

WYCKOFF, SEAMANS & BENEDICT,

[SEAL] by W. O. Wyckoff, President.

Attest: I. C. SEAMANS, Sec'y.

I served the other copy, being the same as the above letter in all respects on C. E. Anderson, Secretary and Treasurer of the "Remington-Scholes Typewriter Co.," at the office of the company, 53 Dearborn street, Chicago, this 25th day of June, 1894.

S. W. CRANDALL.

462

**Complainant's Ex. Notice to Howe Scale Co., June 25, 1897.** 463

Registry return receipt sent June 25, 1897.

Reg. No. 64467, From Post-Office at New York, N. Y.

Reg. Letter / Reg. Parcel } Addressed to Howe Scale Co., Post Office at Rutland, Vt.

---

¶ After obtaining receipt below, the Postmaster will mail this Card without cover and without postage, to address on the other side.

---

Received the above described Registered { Letter / Parcel } 464

(Sender's name on other side.)

Sign dotted lines to the right.
When delivery is made to other than addressee the name of both addressee and recipient must appear. } Howe Scale Co. Y. S. Hoyt.

Erase letter or parcel according to which is sent.

---

(Other side of card.)

When the registered letter or parcel accompanying this card is delivered, the Postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this 465
card without cover to address below.

A penalty of $300 is fixed by law for using this card for other than official business.

---

Post Office Department.
Official Business.

Stamp here name of Post Office.

Post Office at

and date of delivery.

Return to
Name of Sender: Wyckoff, Seamans & Benedict.
Street and Number of Post Office Box. 327 Broadway.
Post Office at New York,
County of New York, State of New York.

466 REMINGTON STANDARD TYPEWRITER.

Fine Linen Papers and Typewriter Supplies of every Kind. Send for Sample Book.

New York, Boston,
Philadelphia, Washington,
Baltimore, Chicago,
Buffalo, Rochester,
St. Paul, St. Louis,
Trade Mark. Indianapolis, Milwaukee,
Mineapolis, Denver,
Kansas City, Cleveland,
Cincinnati, Paris, France,
London, England,
Manchester.

WYCKOFF, SEAMANS & BENEDICT.

—

NEW YORK, 327 B'way.

Our goods are sold in all the principal cities of the world.

467 Cable Address: Wrypeach, New York.

JUNE 21, 1897.

To

Howe Scale Company of 1886,

and

Mr. John A. Mead, President of said Company,

Rutland, Vermont.

GENTLEMEN:—

We are informed that you are offering for sale, advertising for sale, and selling typewriting machines under and by the names "Remington," "Remington-Sholes," "Remington-Sholes Company," "The
468 Remington-Sholes Company," "Rem-Sho," "The Rem-Sho," etc., and this is to notify you, that in so doing you are infringing upon the trade-mark and trade-name rights of Wyckoff, Seamans & Benedict.

We hereby notify you that unless your company, its agents and all persons who are engaged in the sale of typewriting machines, for or on your behalf, bearing said names or any of them, desist from the use of said names and every of them, upon or in connection with the offering for sale, advertising for sale or selling of said machines, we shall take such legal proceedings against you as may be necessary

to prevent you and your agents from further in- 469
fringement of our trade-name and trade-mark rights.

Very respectfully yours,
WYCKOFF, SEAMANS & BENEDICT.
C. W. SEAMANS, Sec'y.

STATE, CITY AND COUNTY OF NEW YORK, } ss.

W. Frank Bogart, being duly sworn, deposes and says that he is by occupation a book-keeper, that he is over twenty-one years of age; that he resides in Brooklyn, Kings County, in the said State; that on the 25th of June, eighteen hundred and ninety- 470
seven, he personally served the annexed notice on Howe Scale Company of 1886, and John A. Mead, President, by depositing in the New York City Post Office a true copy thereof in a postpaid envelope, duly sealed and directed to the said Howe Scale Company of 1886, John A. Mead, President, at Rutland, Vermont, and at the same time and place procured the same to be registered in the said United States Post Office, as appears by the registry receipt therefor, hereto annexed and made a part hereof; and that at the time of said service there was a regular communication by mail between the said United States Post Office, where the said notice was so mailed and registered as aforesaid, and the Post Of- 471
fice to which the same was directed as aforesaid. That deponent carefully compared the said notice so served as aforesaid with the notice hereto annexed, and knows that the same was a true copy of the notice hereto annexed. And further deponent saith not.

W. FRANK BOGART.

Subscribed and sworn to before me this 25th day of June, 1897. }

[Seal] H. C. COLEMAN,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

472 **Exhibits Showing History of Remington-Sholes Company.**

**Complainants' Ex. Sholes-Mulliken Assignment.**

Know all men by these presents, that Zalmon G. Sholes, of Chicago, Illinois, in consideration of the sum of one thousand five hundred dollars and other valuable considerations to him paid by Emma A. Mulliken, of Detroit, Michigan, the receipt whereof is hereby acknowledged, have sold, assigned and transferred, and do hereby sell, assign and transfer to the said Emma A. Mulliken the equal undivided one-third of a certain invention in Type-bar-writing
473 Machines, as fully set forth and described in a specification executed by me preparatory to obtaining letters patent of the United States therefor, filed October 17, 1892, and being serial number 449,099, and of any letters patent of the United States that may be obtained therefor. And I do hereby authorize and request the Commissioner of Patents to issue any letters patent that may be granted therefor to said Emma A. Mulliken jointly with me as owner of one-third interest in accordance with the terms of this assignment.

In witness whereof, I have hereunto set my hand this sixteenth day of December, A. D. 1892, the
474 words "and other valuable consideration" interlined above before signing.

ZALMON G. SHOLES.

In presence of
CYRUS KEHR.
ALICE LINN.

475

**Complainant's Ex. Sholes-Smith Assignment, Feb. 17, 1893.**

Received for record March 10, 1893, and recorded in Liber P 47, page 310, of Transfers of Patents.

In testimony whereof, I have caused the
[SEAL.] seal of the Patent Office to be hereunto affixed.

W. E. SIMONDS,
Commissioner of Patents.

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476

**Assignment.**

To all whom it may concern: Be it known that whereas I, Zalmon G. Sholes, of the City of Chicago, in the County of Cook, and State of Illinois, have invented certain new and useful improvements in typewriters, and whereas I did on October 22, A. D., 1892, and December 20, A. D., 1892, file in the United States Patent Office applications for Letters Patent for said improvements, which applications bear respectively the Serial Nos. 449,099 and 455,789, and whereas George E. Smith also of said City of Chicago, desires to acquire an interest in the Letters Patent to be granted for said improvements.

477

Now, therefore, for and in consideration of the sum of one dollar ($1.00) to me in hand paid by the said George E. Smith and for other good and valuable considerations, the receipt of all which I hereby acknowledge, I, the said Zalmon G. Sholes, have sold, assigned, transferred and set over and do by these presents sell, assign, transfer and set over unto the said George E. Smith, his heirs, assigns and other legal representatives, the undivided 1/3 interest in and to the said applications and in and to the Letters Patent to be granted upon said applications; and I hereby authorize and request the Com-

missioner of Patents to issue said Letters Patent granting one-third (1/3) of the title to the said George E. Smith in accordance with the foregoing.

In testimony whereof, I have hereunto set my hand and affixed my seal this 17th day of February, A. D., 1893.

ZALMON G. SHOLES. [SEAL.]

Witnesses:

**Complt's Ex. Sholes-Smith-Wadhams and Camp Agreement, Apr. 8, 1893.** 481

Memorandum of Agreement, made and concluded this 8th day of April, 1893, by and between Zalmon G. Sholes, George E. Smith, Edward A. Wadhams and Thomas E. Camp, each individually for himself,

Witnesseth:

That, whereas, the said parties are by proper transfer the owners each of an undivided one-fourth of certain inventions in Typewriters embodied in four certain applications for patents filed in the United States Patent Office by Zalmon G. Sholes 482
heretofore, and also of a certain United States patent to Lisle B. Harkness, dated March 4th, 1890, and numbered 422,775;

Now, therefore, the said four parties do mutually agree as follows, to wit: A corporation is to be formed under the laws of the State of Wisconsin, to be called "The Z. G. Sholes Company," having a capital stock of ten thousand dollars; an exclusive license is to be given said corporation for the manufacture and sale of Typewriters embodying said inventions under any patents which may or shall hereafter be allowed or granted upon the application of said Zalmon G. Sholes or which may by purchase 483
or any transfer be owned or possessed by said parties or either of them. The consideration for said license is to be one one-half the capital stock of said corporation, both of the original stock and any increase of the capital stock hereafter. The said Wadhams and the said Camp are to subscribe for and pay in cash for one-half of the capital stock of said corporation, to wit: an amount at par value of five thousand dollars, and the said Wadhams and the said Camp furthermore agree that they will provide all the necessary capital and resources and financial backing necessary for the manufacture and sale of a reasonable number of said Typewriters that said

corporation is able to sell or contract for the sale of hereafter; that, in case of inability or default on the part of said Wadhams and Camp in the fulfilling of this obligation, they will accept the amount of money which they have put in to said corporation and the attempt at fulfillment of this agreement on their part, and re-assign and re-transfer all stock in said corporation and any other assets which they may hold under or in consequence of this agreement and all interest in said patents, inventions and machines to the said Sholes and Smith.

And each and all of said parties do hereby covenant and agree that they will assign, transfer and set over to said four persons herein named jointly any and all inventions or improvements in Typewriters or their attachments or allied inventions which they individually or jointly may invent or obtain by purchase or transfer hereafter.

And the said parties do hereby each individually covenant, bargain and agree with each of the other of said parties individually, and with all of said parties jointly, that he will not assign, transfer or part in any way with any interest in said inventions or patents without the consent of each and all of the other parties herein mentioned.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

ZALMON G. SHOLES. [Seal.]
GEO. E. SMITH. [Seal.]
EDWARD A. WADHAMS. [Seal.]
THOMAS E. CAMP. [Seal.]

**Complainant's Ex. Sholes-Mulliken and Smith Assignment.** 487

Know all men by these presents, that we, Zalmon G. Sholes, Emma A. Mulliken and George E. Smith, in consideration of one dollar and other valuable considerations to us in hand paid, do hereby sell, assign, transfer and set over unto Edward A. Wadhams, Thos. E. Camp, George E. Smith and Zalmon G. Sholes, jointly, an undivided one-fourth to each, all our right, title and interest, and the right, title and interest of each of us, of, in and to those certain inventions of Zalmon G. Sholes, which are set forth and described in an application for Letters Patent, filed by Zalmon G. Sholes in the United 488
States Patent Office on the 18th day of March, 1893, and bearing serial number 466,590;

An application for Letters Patent filed in the United States Patent Office by Zalmon G. Sholes on December 20, 1892, and bearing serial number 455,789;

An application for Letters Patent filed in the United States Patent Office by Zalmon G. Sholes on the 17th day of October, 1892, and bearing serial number 449,099.

An application for Letters Patent left for filing at the United States Patent Office on the 31st day of March 1893, which application was sworn to on the 28th day of March, 1893, but which was not regu- 489
larly filed on that date by reason of an informality in some of the accompanying papers when it was so attempted to be filed;

United States Letters Patent to Lisle B. Harkness, number 422,775, dated March 4, 1890;

To have and to hold unto the said four assignees jointly an undivided one-fourth each of said inventions, and the right to obtain a patent or patents thereon in the United States and all foreign countries where the same are patentable; and we do hereby covenant that the patents for said inventions shall issue jointly to said four assignees or their or-

490 der given jointly, and do hereby request the Commissioner of Patents to issue the same to said four assignees, jointly.

In witness whereof, we have hereunto set our hands and seals this 8th day of April, 1893.

Z. G. SHOLES, [Seal]
E. A. MULLIKEN, [Seal]
GEO. E. SMITH. [Seal]

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## Complainant's Ex. Articles of Incor-
491 ## poration of the Z. G. Sholes Company.

Know all men by these presents, that we, William H. Gibson, Frank A. Krehla and John H. Hurley, all of Milwaukee, Wisconsin, being each an adult person and a resident and citizen of said State of Wisconsin, whose names are hereunto subscribed, do hereby, pursuant to the provisions of Chapter 86 of the Revised Statutes of said State and the acts amendatory thereof, make, sign and acknowledge these written articles for the purpose of forming a corporation under said statutes, and for that purpose do declare and set forth the following, namely:

492 First. We, the said corporators, declare that we do hereby associate ourselves for the purpose of forming a corporation pursuant to the provisions of Chapter 86 of the Revised Statutes of the State of Wisconsin and the acts amendatory thereof, the business and purpose whereof are the purchase and sale of patents, licenses and inventions for typewriters and tools and implements for making them and accessories for their use in the manufacture and sale of typewriters and typewriter supplies.

Second. The name of said corporation shall be "The Z. G. Sholes Company," and its location shall be at the City of Milwaukee, County of Milwau-

kee, and State of Wisconsin, at which place its gen- 493
eral offices shall be kept.

Third. The amount of the capital stock of said corporation shall be ten thousand dollars ($10,000), which shall be divided into one hundred (100) shares of one hundred dollars ($100) each.

Fourth. The general officers of such corporation shall be a President, a Vice-President, a Secretary and a Treasurer, and the number of the directors of said corporation shall be four, and the same person shall be eligible to fill more than one office in case he shall be elected to fill the same.

Fifth. The duties of the president shall be to preside at all meetings of the stockholders and di- 494
rectors of the corporation, to have general oversight of its business and transactions, and be its principal executive officer. He shall also perform such other duties as are prescribed by the by-laws of the corporation. The duties of the vice-president shall be to perform all duties incumbent upon the president in the absence or disability of the president and whenever required to do so by the directors. He shall also perform such other duties as are prescribed by the by-laws of the corporation. The duties of the secretary shall be to keep a correct record of all meetings of the stockholders and directors, to be the custodian of its stock-book, rec-
ords, contracts, papers, documents and muniments 495
of title and of the corporate seal, and to perform such other duties as may be prescribed from time to time by the by laws of the corporation or imposed upon him by vote of the directors. The duties of the treasurer shall be to safely keep and disburse under the instructions of the board of directors, all the funds of the corporation, and to perform such other duties as may be required by the by-laws of the corporation.

Sixth. The terms and conditions upon which members of said corporation shall be accepted, discharged and expelled are that any persons to whom

stock shall be originally issued or who shall lawfully become the owner thereof by descent, purchase or otherwise, shall be a member of said corporation, and shall cease to be a member and be freed from liability as such, when he shall have transferred his stock and the transfer thereof has been duly entered on the books of the corporation according to the provisions of law.

Seventh. By-laws for the government of the affairs of said corporation, prescribing the duties of all the officers thereof, may be adopted and established at any time by vote of a majority of the stockholders thereof, at any stockholders' meeting, and after being adopted and established may be modified, amended or rescinded by a majority vote of the stockholders at any regular meeting.

Eighth. Each stockholder shall be entitled to a certificate for the shares owned by him, which shall be signed by the President and Secretary and have affixed thereto the corporate seal. No certificate otherwise issued shall be binding upon the corporation, and upon transfer of any shares the old certificate shall be surrendered properly endorsed with such transfer, and a new certificate or certificates issued to the transferee.

In witness whereof the said corporators, William K. Gibson, Frank A. Krehla and John H. Hurley, have hereunto set their hands and duly acknowledged these articles in writing this 8th day of April, A. D. 1893.

WILLIAM K. GIBSON,
JOHN H. HURLEY,
FRANK A. KREHLA.

499

STATE OF WISCONSIN, } ss.
Milwaukee County. }

Be it remembered that on this 8th day of April, 1893, personally appeared before me William K. Gibson, Frank A. Krehla and John H. Hurley, to me known to be the persons named in and who executed the foregoing written articles of association of The Z. G. Sholes Company, and acknowledged the same.

CHAS. L. GOSS,
Notary Public,
Milwaukee County, Wisconsin.

500

STATE OF WISCONSIN, } ss.
Milwaukee County, }

William K. Gibson and Frank A. Krehla, being duly sworn, do each for himself depose and say that he has read the foregoing copy of Articles of Association, and that the same presents a full, true and correct copy of the original Articles of Association of The Z. G. Sholes Company, and that said deponents are two of the signers of such original articles.

WILLIAM K. GIBSON,
FRANK A. KREHLA.

501

Subscribed and sworn to before me this 8th day of April, A. D. 1893.

CHAS L. GOSS,
Notary Public,
Milwaukee County, Wisconsin.

502 STATE OF WISCONSIN, } ss.
Milwaukee County. }

I, Henry A. Verges, Register of Deeds in and for said County, hereby certify that the foregoing is a true and correct transcript from the records in my office as recorded in Volume H of Incorporations, pages 603, 604 and 605, that I have carefully compared the same with said records and that it is the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal this 8th day of April, A. D. 1899.

[SEAL AND STAMP]

503 H. A. VERGES,
Register of Deeds,
Milwaukee County, Wisconsin.

STATE OF WISCONSIN, } ss.
County of Milwaukee. }

I, D. H. Johnson, do hereby certify that I am the presiding Judge of the Circuit Court, within and for the County of Milwaukee; that H. A. Verges, whose name is subscribed to the certificate subjoined to the within record is and was at the date of said certificate Register of Deeds for the County of Milwaukee, and State aforesaid, duly elected
504 and qualified; that I am well acquainted with his handwriting and know the signature thereto to be genuine; and further that said certificate of attestation is in due form of law, and that the seal thereto attached is the proper seal of said Register of Deeds.

Witness my hand at Milwaukee, in said County, this 19th day of April, A. D. one thousand eight hundred and ninety-nine.

D. H. JOHNSON,
Circuit Judge.

STATE OF WISCONSIN, } ss. 505
County of Milwaukee, }

I, G. Ringenoldus, Clerk of the Circuit Court in and for Milwaukee County and State of Wisconsin, do hereby certify that the Honorable D. H. Johnson, whose name is subscribed to the within certificate, was at the date thereof presiding Judge of the Circuit Court for Milwaukee County, State of Wisconsin, duly elected and qualified. I further certify that I am well acquainted with the handwriting of such Judge and know that the signature to said certificate is genuine.

In witness whereof, I have hereunto set my hand and the seal of said Circuit Court at Milwaukee, 506
this 19th day of April, A. D. one thousand eight hundred and ninety-nine.

[SEAL AND STAMP] G. RINGENOLDUS.
Clerk of the Circuit Court.

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**Complainant's Ex. Amendment to the Articles of Association filed May 9, 1893.**

At a special meeting of the stockholders of The Z. G. Sholes Company, a corporation organized under the laws of the State of Wisconsin, which 507
meeting was duly convened pursuant to the Articles of Association and By-Laws of said corporation, and at which meeting were present either in person or by proxy, the owners of all the capital stock of said corporation then outstanding, the following resolution was duly adopted by the affirmative vote of all the stockholders present:

'Resolved, That the Articles of Association of said The Z. G. Sholes Company be so amended as to increase the capital stock of said corporation from ten thousand dollars ($10,000) to one hundred thousand dollars ($100,000) and that Article Third

of the Articles of Association of said corporation be and hereby is amended to read as follows:

"Third, The amount of the capital stock of said corporation shall be one hundred thousand dollars ($100,000), which shall be divided into one thousand shares of one hundred dollars ($100) each."

STATE OF WISCONSIN, }
Milwaukee County, } ss.

We, the undersigned, Thomas E. Camp, president, and Edward A. Wadhams, secretary of The Z. G. Sholes Company, do hereby certify that the foregoing amendment to the Articles of Association of the said The Z. G. Sholes Company was duly adopted at a special meeting of the stockholders of said company, duly convened according to the Articles of Association and By-Laws of said company, which meeting was held at the Milwaukee Club House, in the City of Milwaukee, in the county and State aforesaid, on the 1st day of May, in the year 1893. And we do further certify that such amendment was adopted at said meeting by the affirmative votes of the owners of all the capital stock of said corporation, then outstanding, and that the foregoing copy of such resolution and amendment to said Articles of Association is a full, true and correct copy of the original thereof.

In witness whereof, we, the said Thos. E. Camp, the president, and Edward A. Wadhams, the secretary of the said The Z. G. Sholes Company, have hereunto set our hands and have caused the corporate seal of the said company to be affixed hereto at the City of Milwaukee, Wisconsin, this 8th day of May, A. D. 1893.

THOMAS E. CAMP,
President.

{IMP. COR. SEAL}

EDWARD A. WADHAMS,
Secretary.

823

STATE OF WISCOOSIN, } ss. 511
Milwaukee County, }

I, Henry A. Verges, Register of Deeds in and for said county, hereby certify that the foregoing is a true and correct transcript from the records as recorded in Volume I. of Incorporations, pages 40 and 41; that I have carefully compared the same with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 5th day of April, A. D. 1899.

[SEAL]

H. A. VERGES,
Register of Deeds. 512
Milwaukee County, Wis.

STATE OF WISCONSIN, } ss.
County of Milwaukee, }

I, D. H. Johnson, do hereby certify that I am the presiding Judge of the Circuit Court, within and for the County of Milwaukee, that H. A. Verges, whose name is subscribed to the certificate subjoined to the within record is and was at the date of said certificate Register of Deeds for the County of Milwaukee and State aforesaid, duly elected and qualified; that I am well acquainted with his handwriting and know the signature thereto to be genuine; and further that said certificate of attestation 513 is in due form of law, and that the seal thereto attached is the proper seal of said Register of Deeds.

Witness my hand at Milwaukee, in said county, this 19th day of April, A. D. one thousand eight hundred and ninety-nine.

D H. JOHNSON.
Circuit Judge.

514 STATE OF WISCONSIN, } ss.
County of Milwaukee, }

I, G. Ringenoldus, Clerk of the Circuit Court in and for Milwaukee County and State of Wisconsin, do hereby certify that the Honorable D. H. Johnson, whose name is subscribed to the within certificate, was at the date thereof, presiding Judge of the Circuit Court for Milwaukee County, State of Wisconsin, duly elected and qualified. I further certify that I am well acquainted with the handwriting of such Judge and know that the signature to said certificate is genuine.

In witness whereof, I have hereunto set my hand and the
515 seal of said Circuit Court, at
[SEAL & STAMP.] Milwaukee, this 19th day of April, A. D. one thousand eight hundred and ninety-nine.

A. RINGENOLDUS,
Clerk of the Circuit Court.

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**Complainant's Exhibit Photograph Z.**
516 **G. Sholes Machine.**

It shows and illustrates model machine as it existed prior to change of name to "Remington-Sholes.

## Complainant's Ex.—Sholes-Remington Agreement, Aug. 26, 1893.

517

Memorandum of Agreement made and concluded this 26th day of August, 1893, by and between Carver Remington, Franklin Remington and Zalmon G. Sholes, all of Chicago, Cook County, State of Illinois, each individually for himself,

Witnesseth:

That whereas the said parties are, by proper transfer and deeds of assignment, the owners of certain inventions in typewriters, the said Carver Remington and Franklin Remington each of an undivided three-eighths (⅜) interest, and the said Sholes of an undivided one-fourth (¼) interest; and the 518
said inventions being embodied in six (6) certain applications for Letters Patents of the United States heretofore filed in the United States Patent Office by the said Zalmon G. Sholes, and now pending, and of a certain United States Letters Patent granted to Lisle B. Harkness, dated March 4, 1890, and numbered 422,775, for typewriters; and are also the owners, in like proportions as aforesaid (to wit: the said Carver Remington three-eighths (⅜), Franklin Remington three-eighths (⅜) and the said Zalmon G. Sholes one-fourth (¼) of the capital stock of the Zalmon G. Sholes Company, a corporation duly organized and doing business under and by virtue of the laws of the State of Wisconsin, and 519
having its principal place of business in Milwaukee, County of Milwaukee, State of Wisconsin, which said company now holds an agreement for an exclusive license to manufacture typewriters embodying the said inventions under the said Letters Patent and Letters Patents to be issued on said applications six (6) now pending as aforesaid (or which may by purchase or any transfer be owned by the said Sholes, jointly with certain other parties, heretofore jointly with said Sholes the owners of said inventions by said Sholes made, or some of them), the consideration of said exclusive license to be, when

520 and upon the execution thereof, one-half the capital stock of said corporation, both of the original stock and any increase of the capital stock thereafter.

Now, therefore, the said three parties hereto do mutually agree as follows, to wit:

So long as the said The Z. G. Sholes Company remains in existence as a corporation, or until the further agreement of all the parties hereto in writing expressed, the parties hereto, Carver Remington, Franklin Remington and Zalmon G. Sholes, shall be and remain the sole (joint) and only directors and managers thereof.

As soon hereafter as is practicable the officers and
521 directors of said corporation, the Z. G. Sholes Company, shall, in due form of law, for and in consideration of the sum of one dollar, lawful money of the United States, transfer and release to the parties hereto (owners of said Letters Patent and inventions, applications for and Letters Patents thereon), all right, claim and demand for, on or about an exclusive license, as aforesaid, thereon.

And no further, other or different business of any kind or nature shall be transacted by said corporation or in its behalf, except that the same may be dissolved, in due form of law, as soon as practicable hereafter.

And each and all of the parties hereto do hereby
522 covenant and agree that they will, each for himself, assign, transfer and set over to said three persons herein named, jointly, but in the proportions hereinbefore named (to wit: Carver Remington and Franklin Remington, each, an undivided three-eighths (⅜) interest, and Zalmon G. Sholes an undivided one-fourth (¼) interest), any and all inventions or improvements in typewriters or their attachments or allied inventions which they individually or jointly may invent or obtain by purchase or transfer hereafter and while jointly the owners of and interested in the said inventions, Letters Patents and machine embodying the same.

And the said parties do hereby each individually 523
covenant, bargain and agree with each of the other of said parties individually, and with all of said parties jointly, that he will not assign, transfer or part in any way with any interest in the capital stock of said company, the Z. G. Sholes Company, nor with any interest in said inventions or patents, improvements on said inventions or patents therefor, without the consent of each and all the parties herein mentioned.

Provided, however, if an offer of purchase of the entire interest in said inventions and Letters Patents be made to all the parties hereto for a sum and under terms and conditions satisfactory and acceptable to any two of the parties hereto, then in such 524
case all the parties hereto shall accept said offer of purchase and consummate the sale of said inventions and Letters Patent of the United States.

Without that, the party, if any, objecting to said offer of purchase and the consummation of a sale thereunder, shall and will have the right, and may, within days of the receipt in writing of said offer of purchase and of his objections thereto, purchase at a like sum and under like terms and conditions all the right, title and interest in said inventions and Letters Patents of the United States of the two parties hereto so desirous of accepting said offer of purchase.

In witness whereof, the said parties have hereunto 525
set their hands and affixed their seals the day and year first above written.

CARVER REMINGTON (SEAL).
FRANKLIN REMINGTON (SEAL).
ZALMON G. SHOLES (SEAL).

526 **Complainant's Ex. Exemplified copy of Articles of Incorporation of Remington-Sholes Typewriter Co.**

Amount fees paid $

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

To William H. Hinrichsen,
Secretary of State:

We, the undersigned, Leverett Thompson, Charles H. Hamill and Norman Hapgood propose to form a corporation under an Act of the General Assembly of the State of Illinois, entitled "An Act concerning Corporations," approved April 18, 1872, and all acts amendatory thereof; and for the purpose of such organization, we hereby state as follows, to wit:

527

1. The name of such corporation is Remington-Sholes Typewriter Company.

2. The object for which it is formed is to manufacture, buy, rent or otherwise acquire, own and operate, and to sell, lease or otherwise dispose of typewriting or other machines, and all parts, materials and supplies pertaining thereto, and to do a general manufacturing, merchandising and contracting business.

528

3. The capital stock shall be one hundred and fifty thousand dollars.

4. The amount of each shars is one hundred dollars.

5. The number of shares fifteen hundred.

6. The location of the principal office is in Chicago, in the County of Cook, State of Illinois.

7. The duration of the corporation shall be thirty years.

LEVERETT THOMPSON.
CHARLES H. HAMILL.
NORMAN HAPGOOD.

529

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, G. Russell Leonard, a Notary Public in and for the County and State aforesaid, do hereby certify that on the fifth day of May, A. D., 1894, personally appeared before me Leverett Thompson, Charles H. Hamill and Norman Hapgood, to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that they executed the same for the purposes therein set forth.

In witness whereof, I have hereunto set my hand and seal the day and year above written.

530

G. RUSSELL LEONARD,
Notary Public.

[SEAL]

Filed May 7, 1894,

W. H. HINRICHSEN,
Secretary of State.

STATE OF ILLINOIS,

DEPARTMENT OF STATE.

WILLIAM H. HINRICHSEN,
Secretary of State. 531

To all to whom these Presents shall come—greeting:

Whereas, It being proposed by the persons hereinafter named to form a corporation under an Act of the General Assembly of the State of Illinois, entitled, "An Act Concerning Corporations," approved April 18th, 1872, in force July 1st, 1872, and the amendments thereto, the objects and purposes of which corporation are set forth in a statement duly signed and acknowledged according to

532 law, and this day filed in the office of the Secretary of State:

Now, therefore I, William H. Hinrichsen, Secretary of State of the State of Illinois, by virtue of the power vested in and the duties imposed upon me by law, do hereby authorize, empower, and license Leverett Thompson, Charles H. Hamill and Norman Hapgood, the persons whose names are signed to the before-mentioned statement, as Commissioners to open books for subscriptions, to the capital stock of Remington-Sholes Typewriter Company, such being the name of the proposed corporation as contained in the statement, at such times and places as the said Commissioners may
533 determine.

In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of State.

Done at the City of Springfield this 7th day of May, in the year of our Lord one thousand eight hundred and ninety-four, and of the independence of the United States the one hundred and eighteenth.

W. H. HINRICHSEN,
Secretary of State.

[SEAL]

534 To William H. Hinrichsen,
Secretary of State of the State of Illinois:

The Commissioners, duly authorized to open Books of Subscription to the capital stock of Remington-Sholes Typewriter Company pursuant to license heretofore issued, bearing date the 7th day of May, A. D., 1894, do hereby report that they opened Books of Subscription to the Capital Stock of said Company, and that the said stock was fully subscribed; that the following is a true copy of such subscription, viz.:

We, the undersigned, hereby severally subscribe for the number of shares set oposite our respective

names, to the Capital Stock of Remington-Sholes 535
Typewriter Company, and we severally agree to pay the said Company, the sum of $100.00 Dollars, on each share, at such time or times, and such instalments, as shall be required by the Board of Directors of said Company. Chicago, Ill., May 8, A. D. 1894.

| Names. | Shares. | Amount. |
|---|---|---|
| Zalmon G. Sholes, | 374 | 37400 |
| Franklin Remington, | 561 | 56100 |
| Carver Remington, | 562 | 56200 |
| Norman Hapgood, | 1 | 100 |
| Charles H. Hamill, | 1 | 100 |
| Leverett Thompson, | 1 | 100 |

536

That on the 22d day of May, A. D. 1894, at the room 1007 Tacoma Building, in Chicago, at the hour of 4.30 o'clock p. m., they convened a meeting of the subscribers aforesaid, pursuant to notice required by law, which said notice was deposited in the post-office, properly addressed to each subscriber, ten days before the time fixed therein, a copy of which said notice is as follows, to wit:

To

You are hereby notified that the Capital Stock of Remington Sholes Typewriter Company, has been fully subscribed, and that a meeting of the subscribers of such stock will be held at room 1007 Ta- 537
coma Building, Chicago, on the 22d day of May, A. D. 1894, at 4.30 o'clock p. m., for the purpose of electing a Board of Directors for said Company, and for the transaction of such other business as may be deemed necessary.

Signed:

NORMAN HAPGOOD,
CHARLES H. HAMILL,
LEVERETT THOMPSON,
} Commissioners.

538 That said subscribers met at the time and place in said notice specified, and proceeded to elect Directors, and that the following persons were duly elected, to serve until the next annual meeting to be held June 12th, 1894.

| | |
|---|---|
| Charles N. Fay, | Charles H. Hamill, |
| Franklin H. Head, | Norman Hapgood, |
| Charles S. Holt, | Leverett Thompson. |
| William P. Sidley, | |

CHARLES H. HAMILL. } A majority of the
NORMAN HAPGOOD. } Commissioners.

539

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

On this 22d day of May, A. D., 1894, personally appeared before me, a Notary Public, in and for said County, in said State, Charles H. Hamill and Norman Hapgood, and made oath that the foregoing report by them subscribed is true in substance and in fact.

WM. P. SIDLEY,
[SEAL.] Notary Public.

Filed May 25, 1894.

W. H. HINRICHSEN,
540 Secretary of State.

STATE OF ILLINOIS, 541

DEPARTMENT OF STATE.

WILLIAM H. HINRICHSEN,
Secretary of State.

To all to whom these presents shall come, Greeting:

Whereas, a statement, duly signed and acknowledged, has been filed in the office of the Secretary of State, on the 7th day of May, A. D., 1894, for the organization of the Remington-Sholes Typewriter Company, under and in accordance with the provisions of "An Act Concerning Corporations," approved April 18, 1872, and in force July 1, 1872, and all acts amendatory thereof, a copy of which 542
statement is hereunto attached;

And whereas, a license having been issued to Leverett Thompson, Charles H. Hamill, and Norman Hapgood, as Commissioners to open books for subscription to the Capital Stock of said Company;

And whereas, the said Commissioners have, on the 25th day of May, A. D., 1894, filed in the office of the Secretary of State, a report of their proceedings under the said license, a copy of which report is hereunto attached;

Now, therefore, I, William H. Hinrichsen, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby certify that the said Remington-Sholes Typewriter Com- 543
pany, is a legally organized corporation under the the laws of this State.

In testimony whereof, I heve hereto set my hand and caused to be affixed the Great Seal of State.

Done at the City of Springfield, this 25th day of May, in the year of our Lord, one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

W. H. HINRICHSEN,
[SEAL.] Secretary of State.

544 UNITED STATES OF AMERICA, } ss.
STATE OF ILLINOIS. }

OFFICE OF THE SECRETARY OF STATE.

I, James J. Rose, Secretary of State of the State of Illinois, do hereby certify that the foregoing is a true copy of Articles of Incorporation of Remington-Sholes Typewriter Company, the original of which is now on file in my office.

In witness whereof, I hereto set my hand and affix the Great Seal of State, at the City
[SEAL.] of Springfield, this third day of January, A. D., 1899.

545 [STAMP.] JAMES A. ROSE,
Secretary of State.

EXECUTIVE DEPARTMENT ILLINOIS.

I, John R. Tanner, Governor of the State of Illinois, do hereby certify that James A. Rose, who signed the foregoing certificate, was at the time of signing the same and is now Secretary of State of the State of Illinois, duly elected and qualified to that office, and that full faith and credit are due his official attestations; that he is the custodian of the above documents and authorized by law to certify
546 to same, and that the same is in due form and by the proper officer.

In testimony whereof, I hereunto set
[SEAL.] my hand.

Done at the City of Springfield, this third day of January, 1899.

JOHN R. TANNER,
Governor.

547

## Certificate of Dissolution of the Remington-Sholes Typewriter Company.

STATE OF ILLINOS, } ss.:
County of Cook, }

In the matter of the dissolution of the Remington - Sholes Typewriter Company, an Illinois corporation.

Charles N. Fay, President, and Harry R. Gowan, Secretary of the Remington-Sholes Typewriter Company, an Illinois corporation, being first duly sworn, depose and say: 548

That a special meeting of the stockholders of the said Remington-Sholes Typewriter Company was held at the office of the President, 53 Dearborn Street, Chicago, on Monday, Dec. 14th, 1896, at three o'clock P. M., pursuant to a call by the directors, and notices thereof, in form as follows, were deposited in the Post Office in the City of Chicago, in the County and State aforesaid, on the 13th day of November, 1896, properly addressed to each stockholder of the Company:

549

"Office of
REMINGTON-SHOLES TYPEWRITER CO.,
127 Rees Street,
Chicago, Nov. 13, '96.

To the Stockholders of the
Remington-Sholes Typewriter Company.

The undersigned hereby calls a special meeting of stockholders, to be held at the time and place and to vote upon the questions and recommendations set forth in the following preambles and Resolutions adopted by the Board of Directors at a meeting held this day, viz.:

"Whereas, at a special meeting of Stockholders, held November 10th, 1896, to act upon a proposition to divide the capital stock of the Company into Preferred and Ordinary Shares for the purpose of finan-

550 cing the Company, of 2,108 shares outstanding 1,952 shares were voted for said proposition, 30 shares were voted against said proposition, and 126 shares were not represented at all; and, Whereas, unanimous affirmative action of all shares outstanding was necessary to carry said proposition into legal effect, and it was by said vote therefore defeated; and, Whereas, the Directors are unable to devise any other plan of finance which promises success, and the Company's indebtedness is pressing and must be met, it is

Resolved, that the President is hereby instructed to call a special meeting of the Stockholders to be held at the office of the President, No. 53 Dearborn Street, Chicago, on Monday Dec. 14, 1896, at three o'clock P. M., to vote upon the question of winding
551 up the Company's business, selling its assets, paying its debts, abandoning the corporate enterprise, surrendering the charter, franchises, and corporate name, and dissolving the corporation."

"Whereas, the bulk of the indebtedness of the Company is due to certain members of the Board of Directors for money advanced, and they are thereby incapacitated from passing on the question of the value of the Company's assets, but believe that a sale of the assets will produce a sufficient amount to pay all the Company's debts; it is

Resolved, that the Directors hereby recommend that the Stockholders, in the event that they shall vote to wind up the business, do order that the Company's assets shall be sold at public auction, three days' notice of the time and place of sale to be mailed by the Secretary of the Company to each
552 Stockholder."

Very respectfully,
C. N. FAY,
President."

"Public notice of said special meeting was published for three successive weeks in Chicago Legal News, as appears from the following certificate:

November 28, 1896.

A Special meeting of Stockholders of the Remington-Sholes Typewriter Company is hereby called, pursuant to vote of the directors, to be held at the office of the President, No. 53 Dearborn Street, Chicago, on Monday, Dec. 14th, 1896, at three o'clock P. M., to vote upon the question of selling the corporates; paying its debts; winding up its business and surrendering its charter.

C. N. FAY, Pres.

14-16P.

I, James B. Bradwell, 553
Secretary of the Chicago Legal News Company, do hereby certify that a notice signed C. N. Fay, President, of which the annexed printed slip is a true copy, was published for three successiveweeks to wit: Three times in the Chicago Legal News, a Weekly Secular Newspaper, published every Saturday, in the City of Chicago, County of Cook, and State of Illinois, of general circulation 554
throughout said County and State, and specially authorized by law to publish legal notices in said City and County, and that the date of the first paper, containing the same was the twenty-eigth day of November, A. D., 1896, and that the date of the last paper containing the same was the twelfth day of December, A. D., 1896.

In witness whereof, The Secretary of said Chicago Legal News 555
Company has hereunto affixed the seal of said Company, and subscribed his name, at the City of Chicago, this 12th day of December, A. D., 1896.

J. B. BRADWELL,
Secretary.

And I further certify that said Company has received Two and 50/100 Dollars for publishing the sale notice.

J. B. BRADWELL.

556 The President called the meeting to order and the Secretary made the giving of notices to appear as above set forth. The President thereupon declared the meeting duly convened for the purposes stated in the notices. The roll of the stockholders was called, and there were found to be present the following:

| | | |
|---|---|---|
| In person— | | |
| C. N. Fay, | 1,171 | |
| F. Remington, | 252 | |
| Z. G. Sholes, | 34 | |
| A. D. Wheeler, | 101 | |
| F. D. Freeman, | 100 | |
| F. H. Head, | 167 | |
| C. & F. Remington, | 15 | |
| C. N. Fay, Trustee, | 392 | |
| 557 H. R. Cowan, | 25 | |
| | | 2,257 |
| By proxy— | | |
| John Farson, | 10 | |
| Miss Mira Hershey, | 3 | |
| Carver Remington, | 66 | |
| Mrs. Sarah H. Eddy, | 18 | |
| | | 99 |
| | | 2,356 |

Making 2,356 shares present in person or by proxy.

The President thereupon laid before the meeting the preambles and resolutions adopted by the Board of Directors on the 13th day of November, 1896, as set forth in the call for the special meeting and sub-
558 mitted there with a condensed trial balance of the Company as of November 30th, 1896, a copy of which here follows:

| | Dr. |
|---|---|
| Manufacturing and Other Expenses, | $30,904 49 |
| Patents, | 189,920 87 |
| Plant, | 30,939 13 |
| Treasury Stock, | 39,200 00 |
| Machines, Parts and Raw Material, | 26,717 59 |
| Cash and Accounts Receivable, | 3,067 62 |
| Total, | $320,749 70 |

559

| Cr. | |
|---|---|
| Capital Stock, | $250,000 00 |
| Sales, | 19,204 42 |
| Notes, | 42,928 10 |
| Accounts Payable, | 8,617 18 |
| Total, | $320,749 70 |

Thereupon, in order to bring the subject matter of the resolutions before the meeting for action, Mr. Head offered the following:

"Resolved, That the officers of the Company are hereby instructed to take the necessary steps to wind up the Company's business, sell its assets, pay its debts, abandon the corporate enterprise, surrender the charter, franchises and corporate name, and dissolve the corporation."

560

This resolution was seconded by Mr. Wheeler, and upon being put to vote was adopted by receiving the votes of all the shares represented excepting the 392 shares of Treasury Stock held by C. N. Fay, Trustee, not voting. Mr. Head then offered the following resolution:

"Resolved, That the Secretary be instructed to sell all the property and assets of the Remington-Sholes Typewriter Company at public auction at the office of the Company, 127 Rees Street, Chicago, on Saturday, December 19, 1896, at ten o'clock A. M., notice of sale to be sent to all stockholders at least three days previous thereto, and to be published for three successive days prior to said sale in the Chicago Chronicle."

561

The resolution was seconded by Mr. Wheeler, and was adopted by receiving the votes of all the shares represented, the 392 shares of Treasury Stock held by C. N. Fay, Trustee, not voting.

Mr. Wheeler offered the following resolution, which was seconded by Mr. Remington:

"Resolved, That the buyer or buyers of the property and assets of the Remington-Sholes Typewriter Company shall have the privilege of using all or any part of the present name of the Company if the decision so to do is made within 60 days from the date of the purchase."

The resolution was adopted by receiving the votes of all shares represented, the Treasury Stock held by C. N. Fay, Trustee, not voting.

562 That on Saturday, December 19th, 1896, at ten o'clock A. M., at the office of the Remington-Sholes Typewriter Company, 127 Rees Street, Chicago, Harry R. Cowan, Secretary of said Company, pursuant to the resolutions of the stockholders, passed at the meeting held December 14th, 1896, and above set forth, having previously on the 15th day of December, 1896, deposited in the Post Office in said City of Chicago, addressed to each stockholder, a copy of the following notice:

CHICAGO, December 15, 1896.

To the Stockholders of the
Remington-Sholes Typewriter Company.

563 You are hereby notified that all the property and assets of the Remington-Sholes Typewriter Company will be offered for sale at public auction at the office of the Company, 127 Rees Street, Chicago, on Saturday, December 19, 1896, at ten o'clock A. M. This sale is pursuant to a vote of the stockholders at a special meeting held on Monday, December 14, 1896.

Yours respectfully,

H. R. COWAN,
Secretary,

and having caused to be published in the Chicago Chronicle, a newspaper of the City of Chicago, for three successive days prior thereto, a notice of sale as per the following affidavit:

564

565

Stockholders Meeting. Public notice is hereby given that all the property and assets of the Remington-Sholes Typewriter Company will be offered for sale at public auction at the office of the Company, 127 Rees St., Chicago, on Saturday, December 19, 1896, at 10 A. M. This sale is to be made pursuant to a vote of the stockholders.
H. R. COWAN, Sec'y.

This certifies that a notice, of which the annexed printed slip is a true copy, was published for three successive days to wit: Three times in the Chicago Chronicle, a daily newspaper, published in the City of Chicago, of general circulation throughout Cook County, and the State of Illinois, that the date of the first paper containing the same was the 15th day of December, A. D. 1896, that the date of the 566
last paper containing the same was the 17th day of December, A. D. 1896; and that I have charged two and 10-100 dollars for publishing the same.

Dated at Chicago, the 18th day of December, 1896.

H. W. SEYMOUR,
Publisher."

Did sell at public auction to C. N. Fay, he being the highest and best bidder therefor, all the property and assets of the said Remington-Sholes Typewriter 567
Company for the sum of $51,188.69, that with the proceeds of said sale all the known corporate debts of the Remington-Sholes Typewriter Company have been fully paid and its known corporate liabilities completely discharged, that after diligent inquiry these affiants believe that there are no outstanding liabilities of said Company, and that no corporate assets or property of any kind or nature remain in the hands of said Company for distribution among any persons whatsoever; that the foregoing constitutes a full, true and complete record of all proceed-

568 ings taken with respect to the dissolution of the said Remington-Sholes Typewriter Company.

CHARLES N. FAY,
President.

Attest: HARRY R. COWAN,
Secretary.

Remington-Sholes
Typewriter Company.
Corporate Seal.

Subscribed and sworn to before me by said Charles N. Fay, President, and Harry R. Cowan, Secretary of the Remington-Sholes Typewriter Company, who are personally known to me to be such President
569 and Secretary, respectively, this 8th day of March, A. D. 1897.

J. V. PAULSEN,
Notary Public.

{ Notorial Seal. }

570

**Complainant's Ex. Remington-Sholes Company, Articles of Incorporation.** 571

STATE OF ILLINOIS, } ss. Amount of fees paid,
County of Cook. } $———

To the Secretary of State of Illinois,
Hon. JAMES A. ROSE.

We, the undersigned, Charles H. Hamill, Leverett Thompson and William P. Sidley, propose to form a corporation under an Act of the General Assembly of the State of Illinois, entitled "An Act Concerning Corporations," approved April 18, 1872, and all acts amendatory thereof; and for the purposes of 572 such organization we hereby state as follows, to wit:

1. The name of such corporation is Remington-Sholes Company.

2. The object for which it is formed is to carry on a general manufacturing and merchandising business.

3. The capital stock shall be three hundred thousand ($300,000) dollars.

4. The amount of each share is $100.00.

5. The number of shares is three thousand (3,000.)

6. The location of the principal office is in Chicago, in the County of Cook and State of Illinois. 573

7. The duration of the corporation shall be ninety-five years.

CHARLES H. HAMILL,
LEVERETT THOMPSON,
WILLIAM P. SIDLEY.

574

STATE OF ILLINOIS, } ss.
County of Cook, }

I, William J. Louderback, a Notary Public in and for the County and State aforesaid, do hereby certify that on the 31st day of March, A. D. 1897, personally appeared before me Charles H. Hamill, Leverett Thompson and William P. Sidley, to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that they had executed the same for the purposes therein set forth.

In witness whereof, I have hereunto set my hand
575 and seal the day and year above written.

[SEAL] WILLIAM J. LOUDERBACK,
Notary Public.

Filed April 2, 1897.

JAMES A. ROSE,
Sec'y of State.

576

STATE OF ILLINOIS, 577

DEPARTMENT OF STATE.

JAMES A. ROSE, Secretary of State.

To all to whom these presents shall come, Greeting:

Whereas, It being proposed by the persons hereinafter named to form a corporation, under an Act of the General Assembly of the State of Illinois, entitled "An Act Concerning Corporations," approved April 18, 1872, in force July 1, 1872, and the amendments thereto, the objects and purposes of which corporation are set forth in a statement duly signed and acknowledged according to law, and this day filed in the office of the Secretary of State: 578

Now, therefore, I, James A. Rose, Secretary of State of the State of Illinois, by virtue of the power vested in and the duties imposed upon me by law, do hereby authorize, empower and license Charles H. Hamill, Leverett Thompson and William P. Sidley, the persons whose names are signed to the before mentioned statement, as Commissioners to open books for subscription to the Capital Stock of Remington-Sholes Company, such being the name of the proposed corporation as contained in the statement, at such times and places as the said Commissioners may determine.

In testimony whereof, I have hereto set 579
[SEAL] my hand and caused to be affixed the Great Seal of State.

Done at the City of Springfield, this 2d day of April, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-first.

JAMES A. ROSE,
Secretary of State.

580 To James A. Rose, Secretary of State of the State of Illinois:

The Commissioners, duly authorized to open Books of Subscription to the Capital Stock of Remington-Sholes Company, pursuant to license heretofore issued, bearing date the second day of April, A. D. 1897, do hereby report that they opened Books of Subscription to the Capital Stock of said Company, and that the said Stock was fully subscribed; that the following is a true copy of such subscription, viz.:

We, the undersigned, hereby severally subscribe
581 for the number of shares set opposite our respective names to the Capital Stock of

Remington-Sholes Company,

and we severally agree to pay the said Company, for each share, the sum of One Hundred Dollars ($100.00), at the times and in the manner required by the Board of Directors of the Company.

| Names. | Shares. | Amount. |
|---|---|---|
| C. N. Fay, | 250 | $25,000 |
| Fred Hirsch, | 500 | 50,000 |
| Chas. Butler Price, | 50 | 5,000 |
| Arthur D. Wheeler, | 50 | 5,000 |
| Franklin H. Head, | 100 | 10,000 |
| 582 George B. Smith, | 500 | 50,000 |
| J. V. Paulsen, | 50 | 5,000 |
| Julian A. Burch, | 500 | 50,000 |
| Lorenzo E. Dow, | 500 | 50,000 |
| F. Remington, | 500 | 50,000 |

That on the 17th day of April, A. D. 1897, at 53 Dearborn Street, Chicago, Illinois, at the hour of 12.30 o'clock P. M., they convened a meeting of the subscribers aforesaid, pursuant to notice required by law, which said notice was deposited in the post-office, properly addressed to each subscriber, ten

days before the time fixed therein, a copy of which 583
said notice is as follows, to-wit:

To

You are hereby notified that the Capital Stock of Remington-Sholes Company has been fully subscribed, and that a meeting of the subscribers of such stock will be held at 53 Dearborn Street, Chicago, Ill., on the 17th day of April, A. D. 1897, at 12.30 o'clock P. M., for the purpose of electing a Board of Directors for said Company, and for the transaction of such other business as may be deemed necessary.

CHARLES H. HAMILL,
LEVERETT THOMPSON, } Commissioners. 584
WILLIAM P. SIDLEY,

That said subscribers met at the time and place in said notice specified and proceeded to elect Directors, and that the following persons were duly elected for the term of one year, and until their successors are elected and qualified.

Franklin Remington, F. H. Head,
C. N. Nay, J. V. Paulsen,
Arthur D. Wheeler.

CHARLES H. HAMILL,
LEVERETT THOMPSON, } Commissioners.
WILLIAM P. SIDLEY.

585

STATE OF ILLINOIS, }
County of Cook. } ss.

On this twenty-sixth day of April, A. D. 1897, personally appeared before me, a Notary Public, in and for said County in said State, Charles H. Hamill and William P. Sidley, and made oath that the foregoing report by them subscribed is true in substance and in fact.

[SEAL] ARTHUR F. TOWNE,
Notary Public.

Filed April 27, 1897, JAMES A. ROSE,
Sec'y of State.

586 STATE OF ILLINOIS,

DEPARTMENT OF STATE.

JAMES A. ROSE,
Secretary of State.

To all to whom these presents shall come, Greeting:

Whereas, a Statement, duly signed and acknowledged, has been filed in the office of the Secretary of State, on the 2d day of April, A. D., 1897, for the organization of the Remington-Sholes Company, under and in accordance with the provisions of "An Act Concerning Corporations," approved April 18, 1872, and in force July 1, 1872, and all acts amend-
587 atory thereof, a copy of which is hereunto attached;

And whereas, a License having been issued to Charles H. Hamill, Leverett Thompson and William P. Sidley, as Commissioners to open books for subscription to the Capital Stock of said Company;

And whereas, the said Commissioners have, on the 27th day of April, A. D., 1897, filed in the office of the Secretary of State, a report of their proceedings under the said License, a copy of which report is hereunto attached;

Now, therefore, I, James A. Rose, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby certify that the said Remington-Sholes Company is a legally or-
588 ganized Corporation under the laws of this State.

In testimony whereof, I hereto set my hand and cause to be affixed the Great Seal of State.

Done at the City of Springfield, this 27th
[SEAL.] day of April, in the year of our Lord, one thousand eight hundred and ninety-seven, and of the Independence of the United States, the one hundred and twenty-first.

JAMES A. ROSE,
Secretary of State.

UNITED STATES OF AMERICA, } ss.
State of Illinois. }

Office of the Secretary of State.

I, James A. Rose, Secretary of State of the State of Illinois, do hereby certify that the foregoing is a true copy of Articles of Incorporation of Remington Sholes Company, the original of which is now on file in my office.

In witness whereof, I hereto set my hand [SEAL.] and affix the Great Seal of State, at the City of Springfield, this 15th day of December, A. D., 1897.

JAMES A. Rose,
Secretary of State.

## Sundry Exhibits Showing Designation of Complainant's Machine.

### "Complainant's Exhibit Application Blanks. 1-65 inclusive."

These applications were received by Wyckoff, Seamans & Benedict, at its Buffalo office, during the years 1897 and 1898. In response to the question, "What machine do you use?" 153 applicants who were typewriter operators answered "Remington," and ten of said applicants used the abbreviation "Rem" for "Remington."

"Complainant's Exhibit letters A., M. and N." A. represents files of letters received from persons whose names commence with the letter "A," dur- January and February, 1884. 15 of said letters referred to the machine as "Remington," August to January, 1887, and the same letter of the alphabet contains twenty other letters of the same description. February 18 to 28, 1883, letters M. and N. of the alphabet contain 41 letters referring to the machine as "Remington." December 1st to February 1st, 1891 and 1892, contains 14 letters of the same character. Letters received during October, 1890, under the letter "A" contains 22 letters of a similar des-

592 cription. Letters received January 1, to February 15, 1895, letter "A" of the alphabet contains 20 letters referring to complainant's machine as the "Remington."

"Complainant's Exhibit Thorpe & Martin Price List." In this price list parts of machines manufactured by Wyckoff, Seamans & Benedict are referred to in every instance as "Remington."

"Complainant's Exhibit Webster Company Letter and Catalogue." In this letter and catalogue the machines manufactured by Wyckoff, Seamans & Benedict, are referred to as the "Remington."

"Complainant's Exhibit London Letter, February 12, 1884." This is a letter written by the London
593 dealers in "Remington" typewriters on or about above date. At the top of the letterhead is printed the words the "Remington Typewriter, Depot, 6 King St., Cheapside, London, E. C.

"Complainant's Exhibit Bushnell price list." The machines manufactured by Wyckoff, Seamans & Benedict are therein referred to as "Remington" typewriters.

"Complainant's Exhibit Jesse Alexander catalogue." The machines manufactured and sold by Wyckoff, Seamans & Benedict are therein referred to as the "Remington."

"Complainant's Exhibit U. S. Quartermaster's Department Specification." This specification is
594 dated New York City, Oct. 21, 1898, and calls for sealed proposals of certain goods required by the Quartermaster's Department. Under the head of Typewriter Supplies Required are "45 Remington typewriters No. 7, with all the latest improvements." Also, in the same specification, "144 Ribbons, typewriter, for Remington machine, official, indelible, copying, purple."

"Complainant's Exhibit letter from stenographers No. 1 to 100 inclusive." These letters are applications received from stenographers in response to an advertisement for stenographers, in all of which the typewriting machines manufactnred by

complainant is referred to as the "Remington" machine or "Remington" typewriter. 595

"Complainant's Exhibit A & B letters, Dec., 1898, and Jan., 1899, Nos. 1-66 inclusive." These letters were received at the New York office of Wyckoff, Seamans & Benedict during December, 1898, and January, 1899. In every instance where the machine manufactured by complainants is referred to it is called the "Remington" typewriter, and in many cases the letters, instead of being addressed to Wyckoff, Seamans & Benedict, are addressed to "Remington Typewriter Company."

"Complainant's Exhibit Jones advertisement for stenographer and Remington operator" consists of a copy of the New York Herald of Dec. 30, 1898, 596
and Jan. 1, 1899, and of the New York Journal and World for the same dates. The advertisements in said papers were as follows: "Stenographer Wanted. State experience, speed and what typewriter accustomed to."

"Remington operator wanted; state experience."

In 82 of these answers to said advertisements, the persons answering designate the complainant's machine as the "Remington" typewriter, or the "Remington" machine, or referred to themselves as "Remington" operators or "Remington" typewritists.

In the Herald of Dec. 30, 1898, are six advertisements inserted by stenographers seeking positions, 597
who referred to the "Remington" typewriter as the one they are accustomed to operate.

"Complainant's Jones Exhibit Phonographic World, Nos. 1-18, both inclusive." Beginning with December, 1893, and ending with February, 1896, this publication, issued monthly between said dates, shows that the complainant's machine was advertised therein as the "Remington" typewriter.

"Complainant's Exhibit Wyckoff, Seamans & Benedict catalogues, circulars," etc.

Advertising General catalogue, Wyckoff, Seamans & Benedict. Advertising novelty, B 310. Pamph-

598 let Montreal dealer, 1890. Typewriter, its growth and uses. Scribner's Magazine, April, 1888. Catalogue, Wyckoff, Seamans & Benedict, designated "A" used between 1893 and 1895. Advertising Postal Card, designated B 376, circulated 1895. Advertising Postal Card, designated B 346, circulated 1895. Advertising Postal Card, designated B 334, circulated January, 1895. Advertising Postal Card, designated 378, circulated June, 1895. Advertising Card, designated B 466, circulated by Wyckoff, Seamans & Benedict. Catalogue, designated 540, published 1897 and widely circulated since in every quarter of the globe. Advertising Card, designated 707 in Italian. Advertising Card in French, relat-
599 ing to Exposition Universelle. Pamphlet, distinguished as Af 814, published and circulated in French speaking countries. French catalogue, circulated where French language is spoken. Pamphlet entitled "Les Concours de Machines à écrire," pp. 4, 5 and 6. Pamphlet entitled "Ma machine à Écrire, Histoire du Passé aet du Présent." pp. 10, 11 and 13. Advertising pamphlet entitled "Erster, Versuch," printed in German language, circulated in German speaking countries. Pamphlets, Nos. 2, 3, 4 and 5, printed in Spanish language, containing instructions for operation of "Remington" models Nos. 3 and 5. Pamphlet in French language containing instructions for Nos. 2 and 4 "Reming-
600 ton" models. Article in New York Tribune, Aug. 21, 1892. Leaflet in Spanish language designated Z 543, containing advertisement of No. 7 "Remington" model. Circular entitled "Einige Urteile," relating to No. 5 Remington model. Catalogue, Portugese language, entitled "A Machina de Escrever Remington," used for advertising Wyckoff, Seamans & Benedict's machines in countries where Portugese language is used. Pamphlet designated F 615, used for advertising "Remington" typewriter in places where Portugese language is used. Pamphlet in French language, designated A 571, used for advertising Remington machine in France

and French speaking countries. Pamphlet in Italian language, designated A 573, used for advertising writing machines in Italy and countries where Italian language is spoken. Pamphlet in Spanish language, designated A 572, used for advertising writing machines in Spain, Central and South America, and in Mexico. Catalogue in Spanish language, designated F 550, used for advertising writing machines in Spanish speaking countries. Advertising card in Spanish, designated F 701. Pamphlet in Spanish language, designated F 530. Pamphlet issued in Portugese language, designated B 622, circulated in Spanish speaking countries. Pamphlet containing instructions for use of Remington No. 7, model printed in Spanish language. Pamphlet designated Nf 828. Printed in French language, containing instructions for use of No. 7 model. These several catalogues, circulars, etc., show the manner in which the "Remington" machine has been advertised, etc., in the several countries where the respective languages in which they are printed are used. 601 602

"Complainant's Magazine exhibits Nos. 1–65 in-
"clusive."

This exhibit consists of Scribner's magazine, Cosmopolitan, Harper's Monthly, Century, Review of Reviews, Atlantic Monthly, McClure's magazine, Forum, Arena, and Engineering magazine, covering a period beginning February, 1881, and ending July, 1897. 603

In Scribner's Monthly magazine for August and October, 1881, the writing machines then manufactured by E. Remington & Sons, of Ilion, New York, are designated as the "Remington Perfected Typewriter," and in the Century Monthly of January and February, 1882, and in Harper's Monthly for January, 1882, the writing machines of E. Remington & Sons are advertised and designated in the same way.

604 In all other copies of magazines forming this exhibit and covering the period from June, 1892, to July, 1897, the machines are designated and advertised as the "Remington" typewriter.

"Complainant's Exhibit World Almanac, Nos. "1 and 2," complainant's machine is advertised as "Remington" typewriter.

"Complainant's Exhibit Montez Novel," published and circulated in 1893. Complainant's machine is therein referred to, pp. 71, 81, 84, as the "Remington" typewriter.

"Complainant's Exhibit, Chamber of Commerce
605 Journal, March 18, 1899."

This exhibit is designed to show that operators on complainant's machines in advertising for situations, are designated "Remington."

See pp. 47–49.

606

607

**Complainant's Ex. Remington Advertisement in Scribner's Magazine for August, 1881.**

THE REMINGTON PERFECTED TYPE-WRITER.

For Business Correspondence and Professional Writing.

(Cut of machine.)

Writes faster and better than the most expert penman, and can be used at sight. 608

EVERY MACHINE GUARANTEED.

It has stood the test of nearly ten years' use and is

CONSTANTLY INCREASING IN POPULARITY.

Its success is wonderful. Send for new circular with names and testimonials of recent patrons.

38 Madison St., Chicago,

124 South 7th St., Philadelphia.

E. REMINGTON & SONS,

281 & 283 Broadway,

New York. 609

Fac simile of page 10, Scribner's Magazine.

610

**Complainant's Exhibit, Remington Advertisement in Harper's Monthly Magazine for January, 1882.**

THE REMINGTON PERFECTED TYPE-WRITER.

For Business Correspondence and Professional Writing. Writes faster and better than the most expert penman, and can be used at sight.

(Cut of machine.)

611

EVERY MACHINE GUARANTEED.

It has stood the test of nearly ten years' use and is constantly increasing in popularity.

E. REMINGTON & SONS,
281 & 283 Broadway,
New York.

38 Madison St., Chicago,
124 South 7th St., Philadelphia.

612

**Complainant's Exhibit. The Century Magazine for Febuary, 1882.** 613

THE REMINGTGN PERFECTED TYPE-WRITER.

For Business Correspondence and Professional Writing. Writes faster and better than the most expert penman, and can be used at sight.

(Cut of machine.)

EVERY MACHINE GUARANTEED.

It has stood the test of nearly ten years' use and 614
is constantly increasing in popularity.

E. REMINGTON & SONS,
281 & 283 Broadway,
New York.

38 Madison St., Chicago,
124 South 7th St., Philadelphia.

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**Complainant's Exhibit Report of Commissioner of Patents, December 31, 1895.** 615

"Typewriting Machines.—The forerunner of the modern typewriter of the usual form is the so-called Remington machine. Numerous inventors and mechanics have been engaged in reducing the Remington machine to marketable form, but the principal ones are Jenne, Sholes, Yost and Brooks. No patent was ever granted on the broad elements of a typewriter, although several hundred patents have been granted of more or less scope on the detailed features thereof. Owing to the intricate and technical nature of the improvements covered by the patents on typewriters, it is impossible, within the

616 scope of this report, to more than give the data of the characteristic patents on this subject. See the following list: Sholes No. 207,559, August 27, 1878; Yost, No. 313,973, March 17, 1885; Yost, No. 408,-061, July 30,1889; Jenne, No. 478,964, July 12, 1892; Jenne, No. 548,553, October 22, 1895; Brooks, No. 202,923, April 30, 1878; Clough & Jenne, No. 199,263, January 15, 1878; Spiro, No. 435,775, September 2, 1890; Brown, No. 465,451, December 22, 1891; Davidson, No. 487,047, November 22, 1892; Densmore, No. 507,726, October 31, 1893; Unz, No. 400,146, March 26, 1889; Blickensderfer, No. 472,-692, April 12, 1892; Hammond, No. 290,419, December 18, 1883; Williams, No. 442,697, December
617 16, 1890; Webb, No. 471,710, March 29, 1892; Hall, No. 238,387, March 1, 1881. In this class 1,204 patents have been issued.

In connection with typewriters there have been invented inking ribbons, single and manifold. The first typewriter ribbon was patented in 1886 by Anderson, No. 349,026, September 14, and the first inking ribbon for manifolding was patented in 1888 by Wortman, No. 376,764, January 24."

**"Complainant's Exhibit Fay patent No. 629,438 and original application."**

618 Application was filed Jan. 13, 1897, and patent granted July 25, 1899. The improvements described and claimed in this patent relate to inking ribbon feed mechanism for typewriting machines. The application was sworn to by Mr. Charles N. Fay, the President of the Remington-Sholes Company, the 5th day of January, 1897. In the specification of his patent, among other things, Mr. Fay says: "In typewriting machines in which inking ribbons are employed, it is customary to employ suitable mechanism for shifting the inking-ribbon in order to expose a new surface to the impact of the type. An example of one type of such mechanism is found in the old 'Remington No. 2' machine, * * * ."

**Complainant's Exh. Remington Draft and Envelope.** 619

Draft.

MOUNT VERNON BANKING COMPANY.

$29.00. Mt. Vernon, Ind., Oct. 7, 1899.

(Original) Pay to the order of Remington, Twenty-nine 75/100 dollars.

To the Third National Bank, Cincinnati. $29.75
Chas. A. Parea. Pr.

Envelope. 620

Return in five days to
The Mount Vernon Banking Co.,
Mt. Vernon, Ind.

Post-mark. (Stamp.)

REMINGTON,
12 E. Market Street,
Indianapolis.

Back side of draft endorsed.

Remington,
Pay to the Fletcher Nat'l Bank,
Or order,
Wyckoff, Seamans & Benedict,
Geo. E. Field. Mgr. 621

**Exhibits Showing Confusion in Business.**

W. S. & B. card in connection with Springer letter.

622 **Complainant's Exhibit, Rem-Sho Indianapolis Envelopes.**

1

(Cut of Works) Post mark. (Stamp)

Return in 5 days to
Limmerman Mfg. Co.
Manufacturers of
Buggies, Road Wagons
and Wind Mills.

Auburn, Ind.
Remington Typewriter
Co., Indianapolis,
Ind.

2

Return in 5 days to Post mark. (Stamp)
R. T. Hollowwell,
Attorney at Law,
623 Danville, Indiana.

Remington Typewriter Co.,
12 East Market St.,
Indianapolis, Ind.

3

Alexander & Co., Post mark. (Stamp)
Druggists,
Greensburg, Ind.

Remington Typewriter Agency,
Indianapolis,
Indiana.

4

624 Smith & Berry, Post mark. (Stamp)
Attorneys at Law,
Fowler, Ind. The Remington Typewriter Co.,
Indianapolis, Ind.

5

Magic City Business College
and Post mark. (Stamp)
School of Shorthand and
Typewriting,
Ball Block, Muncie Ind.

Remington Typewriter Co.,
Indianapolis, Ind.

East Market St.

209

6 625

Post mark. (Stamp)

Agent,
Remington Typewriter Co.,
Indianapolis, Ind.

7

After five days return to Post mark. (Stamp)
John G. York,
Attorney and Counseller at Law,
Monon, Indiana.

The Remington Typewriter Exchange,
Indianapolis, Ind.

626

8

Joseph W. Williams, Post mark. (Stamp)
City Clerk,
Brazil, Indiana.

Remington Typewriter Co.,
Journal Building,
Inianapolis,
Indiana.

9

Pittsburg, Cincinnati, Chicago & St. Louis Railway Co. Post mark. (Stamp)

The Remington Typewriter Co., 627
12 Market Street,
Indianapolis, Ind.

Opened by Rem-Sho Typewriter Co.

628 **Complainant's Exhibit Indianapolis Telephone Directory.**

Leaves, Nos. 1 and 2.

Do not blame the Operator if you are kept waiting; it is the fault of the party you want not promptly answering.

Tinware—Wholesale.

1704 Cooney, Seiner & Co.

*429 Tanner & Sullivan.

Township Trustee.

629

*782 Office.

Transfer.

*534 Bird, Frank, Transfer Co. Office.

*444 Bird, Frank, Transfer Co. Office.

213 Born & Co.

285 Central Transfer Co.

630 561 Harris & Puryear.

*675 Hogan Transfer and Storage Co.

2325 Hoosier Transfer and Coal Co.

*1049 Indianapolis Storage and Transfer Co.

1240 Jenkins Transfer Co.

502 Lehman's Transfer Co.

469 McDonald, M R.

United States Offices.

633 Arsenal.

112 Circuit Court.

505 Collector Internal Revenue.

761 Custom House.

*1099 District Attorney.

*1342 Marshal.

*2329 Meat Inspector.

1309 Pension Agent.

*467 Post Office—Main.

2359 Post office—Station "A."

2360 Post Office—Station "B."

*1927 Weather Bureau.

Varnish Works.

567 Indianapolis Varnish Co.

*165 Lilly Varnish Co.

Vault Cleaners.

1675 Enterprise Odorless Co., The

1 on 1072 Girton's N. Y. Odorless Co.

1552 Miller, S.

* Indicates copper metallic circuit with long distance instruments.

Tinware—Wholesale.

335 Meck's Transfer and Parcel Delivery.
1109 Railroad Transfer Co.
21443 Ritter, Henry
*1519 Sweetland, Henry
24481 Taylor Transfer Co.
*725 Union Transfer and Storage Co.
2028 Wilson Transfer Co.
812 Walker, G. W.

Trust companies.

*36 Indiana Trust Co.
1858 Marion Trust Co.
*1576 Union Trust Co.

Typewriters.

*1221 Remington-Sholes Co.
1211 Smith-Premier Typewriter Co.
1549 United Typewriter and Supply Co.
451 Wyckoff, Seamans & Benedict.
"Remington."

United States Offices.

Veneer Works.

*569 Addams & Williamson.
*1836 Williams, D. W. & Co.

Veterinary Surgeons.

*1097 Craig, W. B.
231 Elliott, John
905 Griener, Louis A.
2293 Orlopp, B. G.
*1061 O'Rear, P. O.
831 Pritchard & Son.
1425 Roberts, G. H.

Wagon and Plow Works.

2511 Hussey, J. R. & Co.

Wall Paper.

493 Coppock Bros.
1354 Corson Decorating Co.
4 on 1975 Cunningham, W. I., Wall Paper Co.
*22792 Indiana Wall Paper Co.
2304 Miller, Walter & Co.
1377 Roll's, W. H., Sons.
915 Schleicher & Martens.

631

632

633

* Indicates copper metallic circuit with long distance instruments.



Destroy all previous lists. Call by number only.

For rates to points not noted in this book, apply to Toll Desk.

## R

| No. | | | |
|---|---|---|---|
| *6851 | Rabe, Hermann | Residence, | 629 Lincoln Ave. |
| *22941 | Raffensperger, H. C. | Druggist, | 449 E. South. |
| 608 | Raggsdale & Long | Undertakers, | 336 Massachusetts Ave. |
| 1109 | Railroad Transfer Co. | Office, | 31 E. Georgia. |
| 1363 | Railsback, Charles | Grocer, | 739 N. Illinois. |
| 1356 | Railsback, S. H. | Livery Stable, | 315 E. North. |
| *1825 | Railway Officials and Employees | Accident Asso., | 27 Ingalls Block. |
| 2382 | Railway Trainmen | Club Room, | 52½ Monument Place. |
| Irvington, | | | |
| 1 on *711 | Rainey, Dr. H. W. | Residence, | Railroad Ave. |
| 960 | Ralston, Camden | Real Estate, | 137 W. Market. |
| 1 on *2550 | Raper, Mrs. Ada B. | Residence, | 2129 N. Illinois. |
| 1 on *2573 | Rappaport, Philip | Residence, | 1205 N. Alabama. |
| 2143 | Rasener, Chas. | Grocer, | 34th and Illinois. |
| 312 | Ratti, Joseph | Printer and Binder, | 122-124 S. Illinois. |
| 2 on *2422 | Rathsam, John G. | Residence, | 675 E. 24th. |
| 414 | Rauch, John | Cigars, | 134 W. Washington |
| 433 | Rauch, John | Residence, | 623 N. Capitol Ave. |
| *442 | Rauh, E. & Son | Hides, | 419 S. Pennsylvania. |

| | | | |
|---|---|---|---|
| 307 | Rauh, Henry | Residence, | 418 E. Ohio. |
| 745 | Rauh, S. E. | Residence, | 1311 N. Capitol Ave. |
| | *RAY, IND. | $1.15—3 minutes. | |
| | RAY'S CROSSING, IND. | 25 cents—3 minutes. | |
| *7753 | Raymond, P. B. | Residence, | 45 Woodruff Place. |
| 21771 | Rea, Samuel B. | Residence, | 2201 Talbott Ave. |
| 1240 | Read, C. W. | Sign Painter, | 21 E. Market. |
| 1 on *2572 | Reagan, J. E. | Residence, | 1218 Broadway. |
| 1 on *19540 | Reagan, John | Residence, | 1628 Central Ave. |
| | *RED KEY, IND. | (Exchange) 45 cts—3 minutes. | |
| 21182 | Reed and Robinson | Confectionery and Oils, | 534 Indiana Ave. |
| 1 on *2533 | Reese, Mrs. Mary H. | Residence, | 1706 Central Ave. |
| *933 | Reeves & Co. | Thresh. Machinery, | 47 Kentucky Ave. |
| 733 | Rehm & Van Diense | Insurance, | 22 23 When Building. |
| 1119 | Reick, E. C. | Druggist, | 749 S. East. |
| *1990 | Reid, Samuel | Residence, | 1305 N. Alabama. |
| 1739 | Reiffel, Martin | Pork Packer, | Dakota and Ray. |
| *9333 | Reliable Furniture & Carpet Co. | | 32-36 S. Illinois. |
| 513 | Reller, A. H. | Grocery, | 1301 N. Illinois. |
| *1221 | Remington-Sholes Co. | Typewriters, | 122 E. Market. |
| 451 | Remington Typewriter Co. | Wyckoff, Seamans & Benedict | 12 E. Market. |
| *1943 | Remy, Chas. F. | Rep. Supreme Court, | 109 State House. |
| 391 | Renihan, James | Stoves and Furniture, | 335 W. Washington. |
| 115 | Renihan & Blackwell | Undertakers, | 121 W. Market. |

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| | | | | |
|---|---|---|---|---|
| 2 on | 2332 | Renkert, L. H. | Druggist, | 320 W. Washington. |
| | *14853 | Renter, Jacob | Residence, | 2105 E. Washington. |
| | 1083 | Rentsch, Robert | Grocer, | 1124 N. Senate Ave. |

*Indicates Copper Metallic Circuit with Long Distance Iustrument.

70.

The exclusive Duty of Operators is to answer calls; they have no time for conversation.

643

**Complainant's Exhibit Rem-Sho Indianapolis Business Card.**

C. N. Fay, President. F. Remington, Gen'l Mgr.
F. H. Head, Vice-Pres. J. V. Paulsen, Sec'y & Tr.
Phone 1221.

REMINGTON-SHOLES COMPANY.

R E M — (cut of machine) S H O.

127 Rees St., Chicago.

TYPEWRITER.

Branch office.
122 E. Market St.,
Indianapolis, Ind.

H. V. VAN WINKLE,
Mgr.

644

645

646

**Complainant's Ex., W., S. & B. Letter, July 8, 1899.**

Chicago, July 8, 1899.

Messrs. Wyckoff, Seamans & Benedict,
New York.

Gentlemen :—

A day or two ago we received a letter addressed to Franklin Remington, care Remington Typewriter Co. It was ripped open by the writer when he was dictating a letter, in other words, he was not thinking of what he was doing. We do not recollect ever having done it before. We immediately enclosed the letter to the Rem-Sho Co. and explained the fact that it was torn open hurriedly and carelessly, but that its contents were not removed. We enclose Mr. Remington's reply. We do not know whether this instance is of any value to Mr. Donnelly or not; the envelope, bear in mind, was addressed in care of the Remington Typewriter Co.

647

Very truly,

WYCKOFF, SEAMANS & BENEDICT.

648

649

**Complainant's Ex. Mett Letter and Envelope.**

Office of
Henry Mett,
422½ Morrison St.,
P. O. Box 1075.

Cable Address, "Mett, Portland."
A 1 code used.

Portland, Ore., December 6, 1899.

Wyckoff, Seamans & Benedict,
327 Broadway,
New York.

Gentlemen:— 650

I beg to bring to your notice that I have been appointed by Messrs. Kunst & Albers of Wladiwostok as their purchasing agent, with office in Portland, Ore. As our house exports Typewriters quite extensively to Siberia, I beg to quote to me prices on Regular Russian Remington-Sholes, f. o. b. Portland.

Hoping for an early reply, I am,

Yours truly,
HENRY METT.

Henry Mett,
Portland, Oregon, (STAMP)
P. O. Box 1075. 651

Messrs. Wyckoff, Seamans & Benedict,
327 Broadway,
New York.

652

**Complainant's Ex. A. Rogers Lee Letter, Nov. 4, 1898.**

Vennette F. Pelletreau,
Mortgage Loans,
186 Remsen Street,
Brooklyn, N. Y.
Telephone, 900 Brooklyn.

November 4th, 1898.

Messrs. Wyckoff, Seamans & Benedict,
327 Broadway,
New York, N. Y.

653 Dear Sirs:—

We purchased a Remington-Sholes machine from your company somewhat more than six months ago. This machine has not been very much used during that time, and the type has worn very poorly.

Will you kindly send one of your men over for the machine, and have the type put in proper condition, and oblige,

Yours truly,

A. ROGERS LEE.

654

**Complainant's St. Paul Envelope Exhibit.** 655

This exhibit consists of 151 envelopes. Most of these envelopes are addressed to the Remington Typewriter Company. On the balance of them the address is varied to Remington Typewriter Agency, Remington Standard Typewriter and Remington Office, &c., &c.

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**Complainant's Ex. Noble Letter.**

All agreements are contingent upon Strikes, Accidents and other delays unavoidable or beyond my control. When "Delivered Prices" are quoted by me, it is with the understanding that my responsibility ceases when Bill of Lading is issued, prices only being guaranteed. 656

W. K. Noble,
Manufacturer of and Dealer in
Hoops, Staves & Heading. Cooperage Stock.

Ft. Wayne, Ind., Sept. 26, 1899.

Remington Typewriter Co.,
Chicago, Ill.

Gentlemen:—

Send me your catalogue of typewriter desks and your best discount on same. 657

Yours respectfully,
Wm. K. NOBLE.

Also Stenographer Chair.

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**Complainant's Exhibit New York Commercial, Nov. 28, 1898.**

Army Bids opened.

"Remington Typewriter Company.—Typewriter complete $80.00."

658

**Complainant's Ex. Remington-Sholes Envelope post-marked Nov. 20, 1899.**

Remington-Sholes Company, (STAMP)
City Salesrooms,
126 State Street
(Champlain Building),
Chicago, Ill.

Wyckoff, Seamans & Benedict,
No. 144 Madison St.,
Chicago.

659

**Complainant's Ex., Barnes' Letter.**

Ottumwa, Iowa, 5/8/99.

THE REMINGTON STANDARD CO.,
Chicago, Ill.

GENTLEMEN:—

I wrote you some days ago in reference to some copy holders, but the Rem-Sho people got the letter by mistake and I failed to get much satisfaction out of their reply.

660 Will you please advise if you have the "Reid" copy-holder, sending price, and also send me description, and cut if you have it, of the best and most convenient copy-holder you handle. I want to get something that will throw my notes over the front of the machine and not bring them down where they will be in the road of the carriage. Please advise prices on same. Prompt reply will oblige

Yours truly,
H. W. BARNES.

530 Center Ave.

661

**Complainant's Exhibit, Lewis' Memorandum, Oct. 4, 1898.**

I called at the office of the Tribune Cycle Company, 105 West Fayette Street, Baltimore, October 4, 1898, at 5.30 o'clock P. M., accompanied by Mr. Roger E. Lewis, of Baltimore, and asked to see the Remington-Sholes Typewriter. I was received by Mr. J. T. Gillelan, who told me he was in charge of the handling of the Remington-Sholes machine in Baltimore. I told him I called at the suggestion of Mr. Johnson, of Washington, who called on the Tribune Cycle Company a few weeks ago to examine the machine; I said Mr. Johnson had advised 662
me that the machine was an improved Remington; Mr. Gillelan said yes he knew of Mr. Johnson having called and looked the machine over and assented to its being an improved Remington. I asked Mr. Gillelan the direct question: "Is this an improved Remington?" to which he replied, "yes, it is the *new* Remington; it is manufactured by the former manufacturers of the old Remington (meaning the Remington Standard) and it was invented by the inventors of the old Remington." I repeated three times the direct question, "is this a Remington machine?" and "is this an improved Remington," as Mr. Johnson had been advised by the Tribune Cycle Company, and to each question Mr. Gil- 663
lelan replied "yes, it is." Mr. Gillelan's whole conversation was directed towards convincing myself and Mr. Lewis that his machine was a Remington, invented, as he stated, by the inventors of the old Remington and manufactured by the former manufacturers of the Remington Standard. He said that Mr. Remington and Mr. Sholes, (referring to the men whose names are used on the Remington-Sholes machine) formerly made the old Remington and that they sold the old Remington some time ago to people called Wyckoff, Seamans & Benedict; that these latter people are now making the old Remington, so

664 that the old Remington is no longer manufactured by the "*Remington people at all*," but by the three men named, and that the only typewriter which the Remington "People" are now manufacturing is the Remington-Sholes, so that his is *the* Remington machine.

I repeated to Mr. Gillelan the statement made to me by Mr. Johnson, of Washington, to the effect that he had been informed by the Tribune Cycle Company that the machine they were handling was "an improved Remington, manufactured by the Remington people who formerly made the old Remington." Mr. Gillelan replied the statements made to Mr. Johnson were correct and that Mr. Johnson
665 had correctly understood them.

I was further advised by Mr. Gillelan that the Tribune Cycle Company purchase these machines through the Howe Scale Company, of Rutland, whose sales agents they are for Baltimore and vicinity.

The above statements were made in my presence.

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**Exhibits consisting of Advertisements etc., showing acts of the Defendants and Remington-Sholes Co.'s Agents and Dealers in the United States, in Europe, etc.**

666

**Complainant's Exhibit. Instructions to Agents by the Howe Scale Company.** 667

FACTS TO BEAR IN MIND.

General Points: Be persistent. Keep calling. Do not get discouraged. It is part of the business. Sooner or later you will get an order. Above all things be systematic. Map out your programme each day with a list of prospective customers you expect to see. Keep a personal memorandum book of the result of each visit. Do not go out canvassing in a haphazard way, but work your territory systematically and carefully, with the idea of getting a perfect and clear knowledge of the typewriter 668
situation in it. Make a point to see some new prospective customer every day. Bear in mind the value of friendship and "Pull." Get the name of the officers of any company you may have as a possible purchaser, and see if some one of your friends, or any of the officers of this company cannot assist you by personal introduction or letter. In other words, *leave no stone unturned.* Be neat and careful in your personal appearance. Economize your time. Note your customers' habits and office hours and call only when you feel reasonably sure of finding them in.

669

SPECIAL POINTS. THE MACHINE.

Platen turns up. No lifting of heavy carriage. Rem-Sho is a shift key machine, same as Remington, but the principal difference between the Rem-Sho and the Remington, besides many improvements to be explained later, is its method of shifting capitals. (Salesmen here illustrate by depressing capbutton.) Remington machine prints capitals by shifting the carriage, a loose construction, as any one can see. (If Remington machine convenient, illustrate.) Remington carriage weighs 3½ pounds, is hung on one rail with a leverage of eight

670 inches. Every time the carriage is raised it is racked, and, being loosely constructed, soon gets out of alignment. Any one can see that good alignment depends upon being able to strike the printing point with absolute accuracy every time, and this is impossible with a loosely constructed carriage. In the Rem-Sho printing capitals is done by shifting the disc. (Illustrate.) The disc moves on ball bearings and is light and accurate. (Show the ball bearings.) At the same time it is always locked and held firmly in place as rigid as the frame casting itself, whether printing small type or capitals. (Illustrate this and have customer try disc both when locked for capitals and for small print.) As against
671 the loose shift of the Remington carriage then we have the positive always-locked ball-bearing movement of the disc. This is a strong point and if presented as outlined your customer cannot fail to appreciate it.

NEXT POINT. THE CARRIAGE.

By shifting the disc we are enabled to use a rigid carriage, and in this way secure whatever advantage the makers of the double key-board machines claim for a rigid carriage, (Move carriage a little to the left or right of the center and shake it to show its rigidity, and ask customer to shake it, too. If the
672 Remington machine is handy, call customer's attention to the looseness of the construction of the Remington carriage and compare it with the rigidity of the Rem-Sho.)

*The Rem-Sho is the only machine made* which has the universal or Standard *Remington* keyboard which ninety-five per cent. of operators are familiar with, and the rigid carriage. *This is possible only because we shift the disc.*

*Another important point.* The platen, while it readily turns up (illustrate), at the same time is firmly locked while in use. (Show locks.)

This gives us, then, three important points which customers can readily appreciate, which *no other*

*machine in the market* has got, viz.: Disc shift, 673
ball bearing, always locked as rigid as a part of the frame casting itself; rigid carriage; and platen always locked when in use. The carriage is instantly interchangeable for a wider one, which will take paper fourteen inches wide. (Illustrate by taking off carriage and rails.) This may interest the customer or it may not. Railroad offices, insurance companies, and others having statements, etc., to make out find it very valuable. The wide carriage saves over two-thirds cost of the machine In other machines, we have two machines in one, and accomplish with our machine what it takes two machines of the Remington to do at nearly double the cost. (The carriage being off and placed to one side, the 674
salesman will take up construction of the type-bar and disc.) The type-bars are made of one piece of cold rolled steel. (Show customer here section of disc with type-bar, which every salesman should carry in his pocket.) The bearing points, in order to secure absolute uniformity, are forced under great pressure into a cup-shaped former which gives them all absolutely the same dimensions. The bearings of other machines are generally independent of the bar itself and are ground true. This does not permit of the same accuracy as where the tip is made of the same metal as the bar itself and all formed by the same machine. The tapper headed screw, set between the bearing points and screwing 675
into a long sleeve, permits of taking up the looseness in the bearings which occurs from long use. A slight looseness in the bearing magnifies itself twenty times by the time it gets to the end of the bar, consequently it is most important that there should be some easy adjustable means of taking up the wear. On the Remington bar this is only accomplished by taking the bar and hanger out and riveting the hanger tighter. It requires tools and the services of an expert, and costs money. On the Rem-Sho, if necessary, the operator himself can adjust any bar by the use of a screw driver. The

676 hanger sides are set firmly into the disc. (Illustrate from section of the disc.) It is impossible to turn them in any way. They are there for all time. On the Remington the hanger and type-bar set up on the disc. If the screw which holds down the hanger becomes loose, as frequently happens, the whole thing, type-bar, hanger and all, will swing out of place and the machine will at once be badly out of alignment. The type-bar connecting is a very handy one. Can be readily removed at any time in case of one breaking. (Illustrate.)

The ribbon movement is simple and strong. The button on the right indicates at once which way the ribbon is travelling (illustrate). Some people ask
677 us if we have a compound automatic ribbon movement. No, we say, positively we haven't, and for a very good reason. We have given them up. Two years of use of one of these movements on our No. 1 satified us that there is nothing in these complicated movements for several reasons: In the first place, as the ribbon is driven by the power of the main spring, it takes just twice as much power to drive a ribbon two ways, i. e., crossways, and lengthways, as it does one way. This means just as much more tension on the carriage, or just so much more effort to operate the machine. In the next place, long usage has proven that not as good results can be secured as far as the appearance of the work is concerned when
678 the printing is done across the ribbon, or "with the grain" as a carpenter would say. Nothing is gained by an automatic reverse of the ribbon but the time taken in turning the ribbon shaft wheel (illustrate), and this is nothing. On the other hand, the automatic reversing machines mean a large number of extra parts, which are constantly getting out of order, and as a consequence "the ribbon is stuck" —a familiar sound to the repairman.

The Rem-Sho is built with the idea of combining the greatest amount of utility and at the same time, strength and simplicity. Nothing but what is serviceable and simple has been incorporated in its construction.

The key levers and ribs are all made of finest cold 679
rolled steel, heavily copper plated to keep them from rust. No wood is used at all, consequently no warping out of shape. Each lever has its own independent spring, and can be readily removed if necessary. The levers are notched, which permits of adjusting spring tension to operator. (If advisable this can be shown by removing the back plate of machine.) The bell movement is simplicity itself. (Illustrate.) The ribbon winding crank is most convenient and winds either to the right or left as desired, by turning the ribbon thumb wheel in the direction desired (illustrate).

(Salesman will now put carriage and rails back.)
Platen is instantly interchangeable, permitting the 680
use of another one when doing manifolding work (illustrate and put platen back.)

The machine has a perfect paper feed and will feed carbon, postal cards, envelopes, etc., with perfect accuracy (slip piece of paper and illustrate].

The paper guides slip anywhere desired, thereby accommodating any sized paper (illustrate).

The act of lifting up the platen automatically releases the pressure of the feed rolls against the platen, and permits of taking out carbons or pulling paper readily into position without the use of fingers to release the feed rolls as in pretty much all other machines.

The line spacing mechanism is very simple. It 681
provides for one, two or three line spacing (illustrate).

The spacing pawl is simple and strong and actuates by gravity. No spring about it to get out of order.

When the platen is raised for inspection of work the spacing pawl drops away from the platen of its own accord and the platen can be revolved either way at will.

The platen ratchet detent has a little shoe on it which permits of writing on ruled surface. This is very convenient where blank forms are required to

682 be filled in (illustrate). There is also a platen lock, which is convenient also in large offices sometimes. The operator can leave the work without any danger of it being tampered with. Simply turn the platen up and lock it.

The bars cannot strike the paper (illustrate).

The carriage release is effected by either the left or right hand (illustrate). It is always advisable to get the operator to use the right hand release, as it saves the wear on the dogs and rack. (After the machine is sold the salesman should be careful to show this to the operator).

Margin stops and scale pointer are strong and durable and where they can be easily gotten at. The
683 scale pointer lifts to permit of writing in the margin. The margin stop is so shaped that the scale pointer will travel over it without stopping the motion of the carriage (illustrate). (Saleman will here take the platen out and then take the carriage off and proceed to show the roller bearings movement of the carriage. This is done by taking out the two screws which are located almost in the centre of the carriage on both sides.) This roller bearing movement is the lightest and most durable movement of any machine in the market. There is absolutely no wear to the rollers, and what wear there is will continue to keep them true. This is not the case in the ball bearing carriages, such as the Smith-Premier
684 uses. The balls wear egg-shape after awhile and the carriage becomes sluggish. With our bearings this is impossible. The little trucks simply serve to keep the rollers apart, and all the wear that occurs is on the full face of the truck, which is infinitesimal. (The salesman will put the rollers back and allow the customer to move the carriage up and down so as to illustrate the light action of the roller bearings.) The light action of this carriage allows us to put a very light tension on it to operate it, reducing the wear on the dog and the rack and making it a very agreeable machine to operate.

There is one more feature to explain, and that is 685
the escapement. The escapement on our machine is nothing more than the escapement on the old No. 2 Remington machine, only in place of operating vertically it operates horizontally. No better escapement was ever gotten up. The adjustment points are easily gotten at and are simple and strong. (Illustrate by showing the adjustment of the escapement tension spring and the adjustment of the vertical and horizontal motion of the dogs). To adjust the universal bar simply raise the two rods at each end of the dog holder and either take up or loosen by turning the little caps at the end of the dog holder. The caps act as absolute locks. This is a very easy adjustment—much easier than on the 686
Remington machine. That machine has to be tipped up and adjusted from underneath.

The machine has now been fully explained and it remains with the salesman to add such other interesting facts, such as the history of the company, the connection of our Mr. Remington with this machine and the relation to the old Remington Standard, the fact that this is the second generation of typewriter builders and that the same standard of excellence is being maintained in the manufacture of this machine as all other goods which have been produced by the Remingtons. The machine is an expensive one to the manufacturer, and the company is making a high grade article for 687
a high grade trade. We believe that there is always room on top and that is the goal we are aiming for. The best material only that money can buy is being used in the construction of this machine, and the character of workmanship has been maintained at the highest. Salesmen must realize that the best machine in the world will not sell itself, however, without patience, perseverance and energy as well as courtesy and gentlemanly bearing under all conditions.

882 F.68



688 **Complainant's Exhibit Romig Card.**

H. I. SEDDON,
Manager. Telephone 3882.

REMINGTON-SHOLES COMPANY.

R E M - (Cut of machine) S H O.

508 Market Street, Philadelphia, Pa.

TYPEWRITER.

W. J. ROMIG.

689 ——

**Complainant's Ex. Remington-Sholes Machine Russian Advertisement.**

HIGHEST GRADE OF IMPROVED
WRITING MACHINES.
Model for 1899.
(Cut of Machine)
REMINGTON-SHOLES.
Arranged for Writing Russian.
690 T. E. Hagen, Moscow.
Price list on application.

691

## Complainant's Ex. Howe Scale Company Invoice July 29, 1898.

Telephone 3882. Philadelphia, July, 29, 1898.

Jas. A. Hood,

Astor House,

Bought of the Howe Scale Co.

(Cut of Machine)

Rem-Sho Typewriter

508 Market Street.

692

Manufactured by The Remington-Sholes Co.

Terms:—Cash.

| | |
|---|---|
| One (1) Remington-Sholes Typewriter No. 2993 | |
| "Of the Style Remington," | $100.00 |
| One (1) Metal Cover & Base Board, | |
| Export Discount, 37½% | 37.50 |
| | $62.50 |

Weight over all, 56 lbs. (including packing case)
Measurements over all 19" x 20" x 18".

698

694

**Complainant's Ex. Howe Scale Company's Invoice for Machine No. 3309 of Sept. 16, 1898.**

Telephone 3882. Philadelphia, Sept. 16, '98

James A. Hood, Esq.,

Bought of The Howe Scale Co.,

(Cut of Machine)

Rem-Sho, Typewriter,

508 Market Street,

695 Manufactured by The Remington-Sholes Co.

1 No 2 "Remington"-Sholes Typewriter No. 3,309,
Style Remington, $100.00

1 Metal Cover & B. B.
Exportation disct. 37.50

$62.50

Recd. Payment, 9-16-98.
Howe Scale Co.
Wilgus.

Wt. Over all, 56 lbs., inc. packing case.
Measurements 19″ x 20″ x 18″.

696

697

F. Remington jun.

manufactures the renowned
Remington-Sholes

Typewriter

The Office Inventory *v* Typewriter Co.
Kjobmagergade 18., Telephone 5385

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698

The undersigned hereby declares that the above is a true translation of an advertisement which appeared in the "Berlingske Politiske ag Avertissements-Tidende," Monday the 20th March, 1899

[SEAL] STEEN A. BILLE
By Royal Letters Patent:
Sworn translator and interpreter
Copenhagen, 21st March, 1899

W. S. & B. *v.* Howe Scale Co. of 1886
Compl't's. Ex. Berlingske Political Advertising Tiding.
July 22 '90
L. M. B. Sp. Ex.

Complainent's Exhibit Schreibmaschinen—Zeitung.
(Translation).

699

Remington. Type-lever, with single carriage shift.
Standard Key-Board.
Inking Ribbons.

Remington-Sholes Type-lever, with single carriage shift.
Standard Key-Board.
Inking Ribbons.

700 **Complainant's Exhibit, Rem Sho Booklet.**

This is a catalogue of the Rem-Sho typewriter, describing and illustrating No. 2 and 3 machines, manufactured and sold by the Remington-Sholes Co. On the back side of the title page, facing the cut of the Remington-Sholes Co. factory are these words: "The only machine now made by a Remington." Page 24 of this catalogue is as follows: "In regard to our name. The queston is often asked, What connection has the Remington-Sholes Company with the Remington Standard Typewriter?" We answer, none whatever. The "Rem-Sho" Typewriter is manufactured by the Remington-Sholes Company in Chi-
701 cago, Ill., U. S. A. It originated in the brain of Mr. Zalmon G. Sholes, a son of the original inventor of the Remington Standard Typewriter. In 1893 Mr. Sholes came to Mr. Remington, a son of the original manufacturer of the well-known typewriter which bears his name, and laid his plans and the results of his work before him. The two formed a partnership, and began at once to develop the typewriter with which they are now identified. Later a company was formed of strong capitalists to manufacture the machine and put it on the market, since when it has been tested by two years' use and the No. 2 Model brought out under the personal supervision of Mr. Fay.

702 We state then, emphatically, that this Company has no connection whatever with that well-known and excellent machine. the Remington Standard Typewriter, and caution all possible customers against confusing the "Rem-Sho" with that machine or any other.

We are sometimes asked about the right of the Messrs. Remington & Sholes to the use of their own names in connection with typewriters. In answer we would say that the law is absolutely clear that every man has a right to use or permit the use of his own name (which is his birthright) in business, provided it is so used as not to deceive. In order to prevent deception *absolutely*, we have made our

machine in finish and outward appearance entirely unique, and in all public advertisements, signs, marks and statements, we are careful to set forth that it must not be confounded with any other. This is in accordance with law and good faith, and renders our use of these names morally and legally unassailable. 703

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**Complainant's Ex. Phonographic Journal, Nov. 12, 1898.**

Mr. Remington, General Manager of the Remington-Sholes Company, of Chicago, U. S. A., manufacturers of the Rem-Sho Typewriter, is now in London for the purpose of establishing agencies throughout Great Britain for the sale of the Rem-Sho Typewriter. 704

The *Rem-Sho* Typewriter is a high-grade standard machine, which has successfully pushed its way to the front in the United States. Its strong points are its light action, strength, durability, costly and beautiful finish. The fact that every machine can be fitted with an interchangeable wide paper carriage, taking paper fourteen inches wide, thereby practically making two machines in one. *It is now used by the Governments of the United States, Germany, Austria and Russia.* It is the only typewriter manufactured by a member of the well-known Remington family, the original manufacturers of the Remington Standard Typewriter, but it is not to be confused in any way with the latter machine. 705

Correspondence solicited. Appointments made.

Temporary Offices:

REMINGTON-SHOLES COMPANY,
28a Basinghall Street, London, E. C.

706 W. S. & B. v. Howe Scale Co. of '86.
Complt's Ex. Remington Sholes Machine Russian Advertisement.
July 19 '99 L. M. B. Sp. Ex.

HIGHEST GRADE OF IMPROVED
WRITING MACHINES.
Model for 1899.

REMINGTON-SHOLES.
Arranged for Writing Russian.
T. E. Hagen, Moscow.
Price list on application.

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707

**Complainant's Ex., Remington Imperial Booklet Translation.**

Do not buy the old models.

The latest word of technics—typewriter Remington-Imperial, latest model.

This machine in a short time gained a universal approbation and in preference to other typewriting machines is used in many Government offices in Russia.

Sole representative: P. N. Skuriden,
St. Petersburg, Vladimerski, 4.

708 Do not confound with Remington-Special, introduced some years ago.

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275 P. Latest type. 275 P.

The typewriter.

1. Don't confound with the "Remington-Special" brought out by the factory Wyckoff, Seamans & Benedict a few years ago.

2. Note the improvements and new adjustments, so different in the Remington-Imperial.

3. Remington Imperial manufactured by Remington-Sholes in Chicago, (America)

Sole representative: P. N. Shuriden, St. Petersburg, Vladimerski, prospect, 4.

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## REMINGTON IMPERIAL.

709

The want of necessity of improving the "Remington Standard" machine has been felt long ago, since the machine got easily spoilt through the shaky construction of the carriage, using wood for key levers and through the complicated construction, that caused endless repairs.

The factory "Remington-Standard" does not belong to any of Remingtons and passed into new hands: Wyckoff, Seamans & Benedict long ago, at the time, when F. Remington and Mr. Sholes, the inventor of all Remingtons, left the business and establishing a factory of their own, conduct the same on as solid basis as before.

710

All energy of Wyckoff, Seamans & Benedict's factory was concentrated on Remington-Special machine, yet that machine, by its complication, by absence of marks of punctuation and also in consequence of stiff keys, is far from being perfect.

When the principal inventor, Sholes, left "Remington-Standard business," the last hope for farther improvement of this typewriting machine was gone.

F. Remington, the son of Mr. Remington, together with the principal Director Sholes, established in Chicago, as it is well known, a special factory for writing machines, making a serious opposition and more than that even, little by little pushing Remington Special out of the world market.

711

The latest model brought out this year is the *Remington Imperial.*

*The advantage of this latest machine consists, as follows:*

1. Light and noiseless movements of keys.

2. Convenient and sure transposition of initial letters made with noiseless and correct movement on balls.

3. Possibility of having your writing visible at any time simply by tucking with your finger an elastic roller, that rises by means of spring.

712 4. The movements of dyeing ribbon, controlled by simple appliance, economizes the ribbon and prevents irregularity in its movement.

5. The roller is taken off easily and transfered conveniently together with the work, without taking out paper in transferring it from Russian machine to foreign one and *vice versa*.

6. The ordinary size paper-holder can easily be replaced by one of larger size up to 14 inches in width.

7. Substitution of India rubber ribbon, used formerly for supporting paper, by metallic support, prevents paper from moving at the time of writing.

8. Remington Imperial has many more signs.

713 9. Simple and durable mechanism.

10. Clear and uniform type of alphabet.

11. All parts of machine are made of steel or other metal, insuring stability at the time of fluctuation of temperature.

12. The price of this machine, regardless of all improvements, is the same as of former Remingtons, 275 roubles.

Taking in consideration a condition of majority of workers, the trade and industrial agency (Vladimerski 4) decided to receive pay in installments.

13. Up till now the key levers were made of wood and were easily spoilt through the change of temperature and disorganization of machine.

714 14. Distance-controllers in Remington Imperial are in front, and changes are made quickly when wanted.

15. The sheet put in easily and the paper doesn't curve.

Though payment is made easy to purchaser, he pays nothing extra.

The trade and Industrial Agency (Vladimerski 4) will be fully responsible for the quality of machines sold, guaranteeing its durability for three years.

715

## Complainant's Ex., St. Petersburg Gazette and Advertisement, Dec. 14, 1899.

(Translation.)

Commercial & Industrial Agency, Wladimirski Pr. No. 4.

Don't Buy Old Models

| | | |
|---|---|---|
| Sole Representatives St. Petersburg, Wladimirski Pr., 4. | without having inspected the newest model of the "REMINGTON-IMPERIAL." This is the best typewriter in the world. | Don't confuse with the "Remington Special." |

716

In a short period we received orders of ministries, six banks and many typewriter offices.

The tremendous demand for "Remington Imperial" causes us to have a large quantity on hand. The machines are splendidly mounted in our own workshop, and are sold under three years' guarantee.

Ask for catalogue.

717

718

COMMERCIAL & INDUSTRIAL AGENCY,
St. Petersburg, Wladimirski Pr., 4.

Translation from the St. Petersburg Gazette of Sept. 26, 1899, No. 264.

I, the undersigned, Peter Skwarcow, sworn translator at the Court of Moscow, certify hereby, that the above is a true and correct translation of a Russian advertisement in the St. Petersburg Gazette of the 26th September, 1899, No. 264, which was duly shown to me for examination.

719

Register No. 1320
Moscow the 9/21 Nov. 1899.
Sworn translator at the Court
of Moscow.
P. I. SKWARCOW. [Seal]

I, Samuel Smith, United States Vice-Consul at Moscow, Russia, do hereby certify that above is true signature of Mr. Peter Skwarcow, Sworn Translator, who is personally known to me.

In witness whereof, I have hereunto set my hand and affixed the seal of this consulate the 10/-22nd day of November, 1899.

720 [Seal.]

SAMUEL SMITH,
U. S. Vice-Consul.

721

**Complainant's Ex., Novoe Vremya Advertisement.**

REMINGTON-SHOLES TYPEWRITER,
1898 Model,
manufactured by F. Remington & Z. Sholes, Chicago, America.

Durable construction. All parts are of Metal.

Noiseless and light touch. Regular and pretty type.

Not to be confused with the "Remington" machine manufactured by Wyckoff, Seamans & Benedict.

722

Representative for the whole of Russia, T. J. Hagan, Moscow.

Catalogue gratis.

Don't buy any typewriter before inspecting the Remington-Sholes.

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Translation from the Nowoje Wremja, Nov. 14–26, 1898, No. 8160.

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Depot of
Typewriters and Novelties,
St. Petersburg, Wladimirski, 4. Telephone 511. 723
Received the newest typewriters—the

REMINGTON-IMPERIAL.

These machines, owing to the latest improvements, surpass all typewriters that have been for sale until now.

Installment terms.

Sole agency: St. Petersburg, Wladimirski 4.

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Translation from the Nowoje Wremja, Sept. 22–Oct. 4, 1899, No. 8466.

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724 DON'T BUY OLD MODELS.

The latest and best is the

REMINGTON-IMPERIAL

Newest Model Typewriter.

This machine has in a short period gained general praise, and in preference to other machines has been introduced into many government offices of Russia.

Sole agency: P. N. Skooveedin, St. Petersburg, Wladimirski 4.

Please not to confuse with the "Remington Special," brought out a few years ago.

725

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Translation from the Nowoje Wremja, Oct. 4–16, 1899, No. 8478.

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Commercial and Industrial Agency,

St. Petersburg, Wladimirski 4.

Sole agency of the

REMINGTON-IMPERIAL

Typewriters.

This newest model has surpassed all machines sold until now on its practical construction and good workmanship.

726 Introduced into three ministries and many government institutions of Russia.

Installment payment. Three years' guarantee.

Ask for catalogue and inspect this new model.

&c., &c.

---

Translation from the Nowoje Wremja, Oct. 25, Nov. 6, 1899, No. 8499.

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The Nowoje Wremja is the largest, most important and most influential daily paper of Russia.

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I, the undersigned, Peter I. Skwarcow, sworn translator at the Court of Justice in Moscow, certify hereby, that the above is a true and correct translation of advertisements in the above stated numbers of the "Novoie Vremia," which were duly presented to me for examination. 727

Register No. 1303.
Moscow, 2/14 November, 1899.
Sworn translator at the
Court of Moscow.
P. I. Skwarcow. [SEAL]

S. S.

I, Samuel Smith, United States Vice and Acting Consul at Moscow, Russia, do hereby certify that above is the true signature of Mr. P. I. Skwarcow, sworn translator, who is personally known to me. 728

In witness whereof, I have hereunto set my hand and affixed the seal of this Consulate the 4/16th day of November, 1889.

SAMUEL SMITH,
U. S. Vice and Acting Consul.

[SEAL]

729

730 Complainant's Exhibit Seddon card shows that he is a manager of the branch office of the Remington-Sholes Company at 341 Broadway, New York, N. Y.

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**Complainant's Ex. Office Inventory and Typewriter Co., Limited, Advertisement.**

731 Translation.

A.B.C. Code. Telefon 5385.

THE OFFICE INVENTORY & TYPEWRITER CO., LIMITED.

COPENHAGEN, K. the.....

Kjobmagergade, 18.

We herewith beg to hand you our prospectus of the Remington typewriters sold by us and called

REMINGTON-SHOLES,
CHICAGO.

732 These machines are invented by the young Mr. F. Remington and Mr. Sholes, conjointly, and are a considerable improvement upon the pale of the older systems.

The price of these machines is 400 Kroner, and we offer a satisfactory guarantee for each machine and give personal instruction.

Trusting that you will permit us to offer you a machine on trial in your own office, free of charge

and without any responsibility or obligation on your part, we look forward to your reply and remain 733

Yours respectfully,

THE OFFICE INVENTORY & TYPEWRITER CO., LIMITED.

(Signed) AXEL LEVYSOHN,
C. F. M. KNUDSEN.

Remington-Sholes, Kr. 450.00.

Back-view of the new model Remington with the broad cylinder.

Remington-Sholes' enlarged alphabet. 734

Remington-Sholes, Kr. 40.000.

735

898



736 Remington-Sholes', front view, with raised cylinder.

The machine's extremely simple shifting mechanism. The type bar.

Our new model 1898.

THE OFFICE INVENTORY & TYPEWRITER CO., LIMITED.

Kjobmagergade 18 Copenhagen, K.

The Northern Publishing Co.'s Building. Telephone Nr. 5385.

Remington-Sholes'

737 Veni :

Vidi : Vici :

New Model "Remington"

Most solid construction.
Easiest to manipulate.
Works noislessly.

Instruction in typewriting, free of charge, for the buyer's clerical staff.

Pupils trained.

Machines on trial, free of charge.

Machines on trial, free of charge.

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738 I, the undersigned, do hereby declare that the above is a true translation of the annexed printed circular letter from the "Office Inventory & Typewriter Co.," Limited.

COPENHAGEN, 20th February, 1899.

STEEN A. BILLE,
Sworn translator and interpreter.

(Seal)

CONSULATE OF THE UNITED STATES OF AMERICA.

AT COPENHAGEN, DENMARK.

I, JOHN C. INGERSOLL, Consul of the United States of America, at Copenhagan, Denmark, do hereby certify the seal of Steen A. Bille, Esq., of Copenhagen, and the signature of Steen A. Bille, Esq., Royal Danish translator and interpreter to the instrument of writing hereto annexed, are true and genuine, and as such are entitled to full faith and credit. 739

(Seal) IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Seal of office, this 21st day of February, A.D. 1899,

J. C. Ingersoll,

Consul of the United States of America. 740

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**Complainant's Ex, Hannoverscher Anzeiger and General Anzeiger.**

STATE OF NEW YORK, City and County of New York, } ss.

I hereby certify that the accompanying sheet, marked "1," is a true translation of an advertisement published in the "Hannoverscher Anzeiger" of November 6, 1898, No. 260; and that sheet marked "2," is a true translation of an advertisement published in the "General Anzeiger," Stettin, of November 29th, 1898, No. 279. 741

Sworn to before me, this 27th day of April, 1899. }

WINN M. POLLOCH.

ISAAC GANS,
Notary Public, No. 7, N. Y. Co.

742 (1)

Advertisement from "Hannoverscher Anzieger," No. 260, of November 6, 1898.

(Translation.)

A WRITING APPARATUS OF THE HIGHEST PERFECTION.

Finest References Furnished. Courteous Attendance.

(Cut of machine.)

Sent on Trial Free of Charge. Writing-Machine School.

REMINGTON-SHOLES No. 3.

743 General Agent: Carl Mahlstedt, 38 Georg Street, second floor.

Supplies for Writing Machines of *all* systems.

Manufactory of the NEW Copyholder "Merkur," the only one of its kind.

(2)

Advertisement from "General Anzeiger," No. 279, Stettin, November 29, 1898.

(Translation.)

REMINGTON-SHOLES WRITING MACHINE.

Lessons given in writing on the 744 Remington-Sholes Typewriter.

(Cut of machine.)

Carbon-Paper, Ribbons, and other Supplies, for *all* Systems.

American Office-Furniture, also Registers manufactured by us, Mimeographs, Typewriter Papers of best quality at low prices. Remington-Sholes Co., Limited Stock Company.

Branch at Stettin,
49 Augusta Str., Entrance Königsthor.

Berlin W., 33 Mohren Street.

Leipsig, 17 Grimmaische Street.

Vienna, 2 Kaiser Ferdinand Square.

**Complainant's Ex. La Presse, June 29, 1899.** 745

(Translation.)

MARVELLOUS.

A typewriter who writes 200 words per minute.

AN INTERESTING MEETING

Before the Students and Professors of the Montreal Business College Yesterday Afternoon.

Yesterday afternoon the students of the Montreal Business College were present at a small meeting in which a writing machine (clavigraphe) or rather a typewriter, was the center of attraction. The name 746
of this typewriter is Mr. Charles H. McGurrin, official stenographer in the employ of the United States Government. The title of stenographer is, however, useless in Mr. McGurrin's case, as his little Remington machine makes the knowledge of stenography—which he understands perfectly—unnecessary.

The meeting opened at half-past three. Mr. J. B. Davis, principal of the college, introduced Mr. Franklin Remington, inventor of the Remington typewriter (clavigraphe) and Mr. McGurrin, to the students with a few complimentary words.

Mr. Remington briefly explained the origin of the 747
typewriter (clavigraphe), the various improvements it underwent, and demonstrated the usefulness, or rather necessity, of the machine in a professional or business man's office.

Mr. Franklin Remington is the son of Mr Remington, inventor of the machine which bears his name. He is a relatively young man, and speaks with the ease and practical good sense common in Americans who go straight to the point without unnecessary verbiage. The latest development of the typewriter (clavigraphe) as we have it to-day, dates back six years.

748 After Mr. Remington's short explanatory words, Mr. McGurrin began the promised exhibition. The "Press" reporter, as well as the professors and the students of the institute, were astounded at the extraordinary skill and vertiginous speed displayed by the operator, and when we state that Mr. McGurrin has written as many as 200 words per minute, the reader can form an opinion of what an experienced typist, gifted with sangfroid, can do. Sangfroid, Mr. McGurrin says, is absolutely necessary, and we can easily believe it. The operator whom we watched yesterday gave all the energy of his faculties and all the concentration of his mind to what he was doing. His ten fingers run over the key-
749 board in a bewildering and fantastic manner and with such rapidity that the eye cannot follow their course. It is easily understood that in order to accomplish this the typist, like the pianist of talent, must have his fingers under the most powerful control.

We said above that a typist who possess the skill which Mr. McGurrin has can dispense, if necessary, with stenography, and the operator proved this to be so. Mr. Davis, principal of the college, having been invited to make an address, Mr. McGurrin took down on the machine the exact text of the speaker's words. A pupil was asked to read an extract from a chapter in a reading book. Mr. Mc-
750 Gurrin wrote, in the one minute which the reading lasted, the text of the extract, which is as follows:

(See original translation.)

In a minute's time Mr. McGurrin could have doubled the number of words contained in that extract, but the student who did the reading did not speak loud enough, and the operator had to ask him several times to repeat words which he could not hear, as they were spoken in too low a tone. When it is known that Mr. McGurrin writes on an average on his typewriter (clavigraphe) from seven to eight words per second, it will be understood that

a lengthy silence is not necessary in order to make 751
him lose several words in a minute.

After the short exhibition, the operator gave the students several practical hints, and Mr. Davis then thanked Mr. Remington and Mr. McGurrin warmly for having given his pupils so interesting and instructive a meeting.

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## Complainant's Ex. Remington-Sholes Syndicate Prospectus.

The "Rem Sho" machine can be seen at office of 752
Messrs. Davies, Tait & Co., 168 St. Vincent Street, Glasgow.

Private and Confidential.

The Remington-Sholes Syndicate, Limited.

(To be incorporated under the Companies' Acts, 1862 to 1898.)

Sole agents in the United Kingdom for the "Rem-Sho" Typewriter.

Capital - - - - - £15,000.

In 15,000 ordinary shares of £1 each.

Payable 2/6 on Application, 2/6 on Allotment, and the balance by calls not to exceed 5/ each as and when required. 753

DIRECTORS.

Edmond Brown, Esq., Barrister, L.C.C., 1 Elm Court, Temple, London. Ex-Bailie Peter Burt, Chairman, "Acme Manufacturing Company, Limited," Glasgow. James Colquhoun, Esq., LL.D., 158 St. Vincent Street, Glasgow. Andrew Macdonald, Esq., Manfacturing Chemist, Glasgow. Franklin Remington, Esq., General Manager of Remington-Sholes Company, Chicago, and Basinghall Street, London, E. C., will join the Board after allotment.

754 BANKERS.

The Clydesdale Bank, Limited, London, Glasgow and Branches.

SOLICITORS.

Wilson & Chalmers, 129 St. Vincent Street, Glasgow.

AUDITORS.

Patterson & Anderson, Accountants, Freenock.

SECRETARIES AND REGISTERED OFFICE.

Davies, Tait & Co., Chartered Accountants, 46 Queen Victoria Street, E. C.

755

PROSPECTUS.

This syndicate has been formed for the purpose of acquiring the sole agency for the sale in the United Kingdom of the "Rem-Sho" Typewriter, manufactured by the Remington-Sholes Company of Chicago.

It is claimed by the inventors that this form of typewriter, which has been in use in the United States and on the Continent for the past two years, is superior to and has many advantages over all other high-class standard typewriting machines in the market. Some of the special features of the "Rem-Sho" are as follows, namely: Interchange-
756 able Rigid Roller-Bearing Carriage, enabling machine using 9-inch paper to be immediately altered to use 14-inch paper, foolscap size. This long interchangeable carriage accomplishes the work which competitive machines only do by the use of a second machine, heavy and cumbrous, and costing three times as much. Other features of the "Rem-Sho" are:

Ball-Bearing Automatically Locked Basket Shift.

Simple Straight-away Ribbon Feed.

Perfect Adjustable Regular or Speed Escapements.

Perfect Paper Feed. 757
Permanent Alignment.
Universal Key-board.
Removal Platen.
Automatic Centre Pointer for quick and easy correction and Quickly Adjusted Margin Stops.

The machine is a beautiful model, and every part of it is of the finest material and workmanship, the object of the makers being to turn out an article of the first quality, irrespective of cost.

Mr. Franklin Remington, founder of the Remington-Sholes Company, will join the Board after allotment. His connection with this Syndicate and the parent Company in America is a guarantee that the "Rem-Sho" machine embodies the latest and best 758
improvements known in Typewriting Machines, representing as he does the second generation of the family in the business—his father being the original maker of the Remington Standard Typewriter.

The sale of typewriting machines is an industry which is as yet in its infancy in the United Kingdom, and the great development in their use within the last few years proves that there is a very wide field for this Syndicate's operations.

The "Rem-Sho" Typewriter is a machine which meets all the requirements of Commercial and Professional work engaged in by most men and firms. It has been spoken of very highly in the United 759
States and on the Continent, and many testimonials in its favor have been received from gentlemen who have made use of it for some time in their offices.

In addition to the exclusive right to sell the "Rem-Sho" Typewriter, the Syndicate will have a valuable adjunct to its business in the sale of typewriting accessories, such as Ribbons, Carbon Paper, Typewriter Stationery, Desks and Filing Cabinets. It is believed that a large and profitable business can be done in these accessories.

The price which the Syndicate pays for the "Rem-Sho" is most satisfactory and leaves a substantial margin for profits to the Syndicate after

760 making an allowance for working expenses on the most liberal scale. It is known that some companies selling high-class machines dispose of as many as 6,000 machines per annum in the United Kingdom, but calculating that only 1,000 machines are sold per annum by this Syndicate, the Directors are satisfied that a handsome dividend will be earned for the Shareholders.

The terms upon which the Syndicate have acquired the exclusive selling right of the "Rem-Sho" Typewriter for the United Kingdom are the allotment to the vendor of 3,000 Shares of £1 each in the Syndicate credited as fully paid up.

An agreement has been entered into between the
761 Remington-Sholes Company, of Chicago, on the one part, and as Trustee for the Sydicate on the other part, dated stating the terms on which the business is to be acquired.

The vendors have the right to nominate two Directors after allotment.

A syndicate on similar lines has been formed in Germany about two months ago, and a large business has already been done.

It is intended on the full development of the Syndicate to promote and float a larger company.

Applications for Shares should be made on the accompanying form. If no allotment is made the
762 allotment money will be returned in full.

GLASGOW, January, 1899.

763

**Complainant's Ex. Every 8th day.**

25th December, 1899.

Aver 8, Dag, No. 13.

(Picture of Mr. Franklin Remington.)

We are here, as we know, not too quick to accept what is new, as long as we in any possible way may help ourselves with that which has the tradition on its side. Nevertheless, it begins to dawn upon most of the business people, what has long ago been 764
understood abroad, that the typewriter is an invention of really practical importance.

We reproduce here a photograph of one of the most known typewriter inventors, Mr. Remington, who has recently paid a visit to Copenhagen, in order further to work for the use of his machines in this capital, where he is represented by the new limited company, "The Office Inventory and Typewriter Company."

Translated by STEEN A. BILLE,
By His Danish Majesty's Letters Patent,
Sworn translator and interpreter.

765

766

**Complainant's Ex. Austin Daily Tribune March. 11, 1899.**

A NEW TYPEWRITER.

The only machine not made by the trust and the only machine made by a Remington is the new Remington-Sholes typewriter. It embraces all the desirable features of the trust machines, while the brain of the cunning Remington has imbued it with
767 a number of simple and effective devices which make it at once the most powerful manifolder, the speediest, and at the same time the least complicated of all typewriters. A sample of this machine is on exhibition at Petmecky's, and the Tribune suggests that every one, whether owners of machines or not, call and examine the Remington-Sholes. It is a rare opportunity to secure a machine not made by a trust. Mr. Petmecky will doubtless handle this machine regularly.

768

769

**Complainant's Ex. Austin Daily Statesman, Sunday, March 12, 1899.**

A NEW TYPEWRITER.

The only machine not made by the trust and the only machine made by a Remington is the new Remington-Sholes typewriter. It embraces all the desirable features of the trust machines while the brain of the cunning Remington has imbued it with a number of simple and effective devices which 770
make it at once the most powerful manifolder, the speediest, and at the same time the least complicated of all typewriters. A sample of this machine is on exhibition at Petmecky's and The Statesman suggests that every one, whether owners of machines or not, call and examine the Remington-Sholes. It is a rare opportunity to secure a machine not made by a trust. Mr. Petmecky will doubtless handle this machine regularly,

771

772

**Complainant's Ex. Remington-Sholes Company Letter, Nov. 18, 1898.**

(Rem-Sho letter head.)

November 18, 1898.

Mr. W. M. Scheumaker,
c/o Ætna Life Insurance Co.,
Hartford, Ct.,

Dear Sir:—

773 We have your favor of the 16th, and have read the same carefully. We expect our Mr. Seddon in to-day, and as we do not know what conversation he had with you, we will refer the matter to him.

We admire your enthusiasm, Mr. Sheumaker, and if we arrange with you, shall expect you to do some splendid business with our machine.

We trust that we may be able to write you definitely within a day or two. Hoping that this will be satisfactory, we remain,

Yours very truly,
REMINGTON-SHOLES CO.
G. W. B.

774

**Complainant's Ex. Scheumaker letters, 1, 2, 3, 4, 5, 7, 8, 9, 10, & 12.** 775

No. 1.

J. C. Webster, Vice Pres.
J. L. English, Sec'y. M. G. Bulkeley, Pres.
H. W. St. John, Actuary.
C. E. Gilbert, Asst. Secy.

(Cut of Building.)

Ætna Life Insurance Company.
Hartford, Conn., Aug. 6, 1898.

Messrs. Page, Dennis & Co.,
341 Broadway, New York City. 776

Dear Sirs:—

It has come to my notice that you are the general sales agents for the State of Connecticut for the "Remington-Sholes" typewriter, and as I do not find that the machine is being handled in Hartford it occurred to me that you should have an agent here. I am an old "Remington" operator, and am at the present time connected with the above Company, who, for your information, are one of the largest users of typewriters in this State.

If you can make it sufficiently attractive, I should like to undertake the handling of your machine in Hartford—what can you offer me? 777

Yours very truly,

W. M. SCHEUMAKER.

778

No. 2.

341 Broadway, New York, August 8th, 1898.

Mr. W. M. Sheumaker,
Care, Ætna Life Insurance Co.,
Hartford, Conn.

Sir:

Your letter of the 6th inst. has been received, and in reply we will state that at present our typewriter is unrepresented in your section of Connecticut. We would very much like to have a good live man to take hold our machine and handle it in Hartford and vicinity and for this purpose we desire the ser-
779 vices of an experienced person who can furnish enough capital to pay right out for as many typewriters as will be needed to commence with. If you are in a position to do this we would be pleased to allow you a liberal discount and to start in immediately. In case you cannot undertake this plan we would willingly give you a commission on any orders you may be able to obtain for our machines.

Hoping to hear from you shortly, we remain,

Yours truly,

PAGE, DENNIS & CO.,
per W. DeS. Trenholm.

780

781

No. 3.

J. C. Webster, Vice-Pres, M. G. Bulkeley, Pres., H. W. St. John, Actuary, J. L. English, Sec'y, C. E. Gilbert, Ass't Sec'y.

(Cut of Building.)

ÆTNA LIFE INSURANCE COMPANY.

Hartford, Conn., Aug. 12, 1898.

Messrs. PAGE, DENNIS & Co.,
341 Broadway, New York City.

Dear Sirs:

I have to acknowledge the receipt of your letter, 782
dated the 8th instant, and have taken due note of its contents.

Of course, it was not my idea to give up my position and confine my efforts entirely towards introducing your machine and lay out on the start sufficient money to put in a stock of them; any man who proposed to do such a thing with an entirely *new* machine, and in *this* market—opening a store, etc. —had better be examined as to his sanity. I do believe, knowing this market as I do, and being an old experienced Remington man, that I could get whatever new business was offering by feeling my way into it. Of course, when the time comes and the
business justifies it, nothing would please me more 783
than to be able to order outright ten or twenty machines and have them on hand. However, do not misunderstand me, I am not doing anything of that kind *now*.

If you want to put me in shape so far as price is concerned, give me such information and printed matter as a new Agent should have, etc. I am ready, and would probably buy on the start, say, one machine to have and show about and sell from. I have no use for a machine of any make at the present time, so am not writing with any view to buying one cheap.

784 I can furnish ample capital to pay for any machines I buy, and pay you cash, and should want this considered in making a price to me. I do not ask or expect any credit.

If you want me to go ahead, give me all the information you can, so that I may work intelligently. If I undertake an agency it will not be for fun. I can talk typewriter with anyone and can get a full share of what ever business there is about Hartford. Write me fully by next mail.

Yours very truly,
W. M. SCHEUMAKER.

P. S.—As I am about to take a few days vacation,
785 would thank you to forward your reply to my address—care of T. M. Dixon & Son, New Hartford, *N. Y.*, where I shall be on the Monday of next week.

No. 4, August 16th, 1898.

W. M. SCHEUMAKER, ESQ.,
New Hartford, N. Y.

Dear Sir:

Replying to your favor of the 12th, will state that we will allow you a discount of 30 per cent. off list when less than five machines are bought, and 35 per cent. when five or more. These terms are cash and are regular to our agents.

786 Yours very truly,
PAGE, DENNIS & CO.,
Per (signed)
W. deS. TRENHOLM.

P. S.—Catalogue under separate cover.

No. 5. 787

J. C. Webster, Vice-Pres., M. G. Bulkeley, Pres., H. W. St. John, Actuary, J. L. English Sec'y, C. E. Gilbert, Ass't Sec'y.

(Cut of Building.)

AETNA LIFE INSURANCE COMPANY,

Hartford, Conn., September 7, 1898.

Messrs PAGE, DENNIS & Co.,

341 Broadway, New York City, N. Y,

Dear Sirs:

Referring to your letter of recent date in relation 788
to the handling of your typewriter in Hartford, I delayed answering on account of my absence from the city for my annual vacation. I have returned to business now, and am ready to see what can be done in the way of typewriter business, and if you will agree that for some fixed time no one else can offer your machines in this city, you, of course, to cancel the arrangement at any time when results are not satisfactory, I will proceed and see what can be done, acting under the terms of your last letter.

I have read very critically your catalogue sent me some time since, and have to say you have a most excellent machine, and in many regards it goes 789
way ahead of any machine I have yet seen. It appears to be very attractive in appearance, your departure from the Japan and Nickel finish is a fine idea. The basket shift is another good idea.—I have very seriously felt the need of something of just this character for a long time. Your construction of the type bar is a very fine thing, and it would appear to me would overcome the constant wearing on the bearings and preserve the alignment for a greater period of time—of course, we will have to concede that they will get out of alignment occasionally, despite our best efforts to the contrary. I will say,

790 however, in this connection, that I have yet to see a machine that will hold its alignment so long, (with such constant usage, and run at such a high rate of speed as I do) as the Remington Standard which I use in my work here in this office. The cap, lock-piece and automatic return seem to be excellent qualities. I don't quite like your ribbon movement—the automatic ribbon shift on the Remington can't be beat. The escapement and universal bar is an adoption from the Remington, I observe. As is also the paper feed. What is the manifolding capacity of the ordinary Rem-Sho? I have made twenty-one good copies with my Remington machine. The escapement on your machine seems to go ahead of a
791 great many other machines, but not of the Remington.

Send me a supply of printed matter, catalogues, &c., and write me a good full letter, giving me such information in relation to the handling and sale of the machine as a salesman should have. Of course I shall have to depend on you to keep me informed as to talking points, what to omit as well as what to enlarge upon, &c., &c. In other words, I want to be put in shape to handle the business intelligently and as I believe you would yourselves want it handled. I shall appreciate any suggestions or help you can give me, as I have no doubt the relation will result to our mutual advantage and satis-
792 faction.

While out in central New York I conversed with several Utica merchants on the subject of typewriters, favoring the Rem-Sho, and in almost every case they inquired: "Has this Remington-Sholes anything to do with the Remington typewriter?" Of course I answered in the negative, and, as I was not thoroughly posted on the subject, was unable to give them a satisfactory reason for your machine having the name of "Remington." I have read the last page of your catalogue, but deem this insufficient information on the subject, for an agent, and therefore would thank you if you would kindly

give me definite information on the subject, that is 793
to say, the history of the machine from its birth, and who this Mr. F. Remington (the general manager) is. If I am not very much mistaken, Peter Densmore was the father of the "Remington" typewriter. However, I trust you will enlighten me on the subject.

Write me fully by next mail, please.

Yours very truly,

W. M. SCHEUMAKER.

No. 7.

Telephone 839 Franklin. Address all communications to the firm.

Cable Address "Squog" New York, 794
A. B. C. Code.
(4th Edition)

Page, Dennis & Co.
REM- (Cut of machine) SHO.
341 Broadway, New York.
TYPEWRITER.
manufactured by

THE REMINGTON-SHOLES CO.

September 19th, 1898.

W. M. Scheumaker,
Aetna Life Ins. Co.,
Hartford, Conn.

Dear Sir:

795

Your letter of the 17th to hand and carefully noted. I would state that, owing to a recent change in the management here, things are in a rather mixed up state, and it has taken the writer a considerable amount of time trying to trace up our former correspondence with you, and has not succeeded very well. As far as we can learn, we think the idea was for you to buy one machine as a sample, at 30 per cent. discount, you to act as our exclusive agent in Hartford, and we to furnish you with a quantity of catalogues and other advertising paraphernalia, including, say two signs and electrotype cut for local advertising, &c., &c.

796 Kindly let the writer know if this was the proposition, and, if it is, we will immediately, upon receipt of your letter, forward the machine together with the necessary advertising matter.

Awaiting an early reply, we remain,

Yours very truly,

PAGE, DENNIS & CO.,

H. I. Seddon.

Machine to be C. O. D. or the order to be signed by a responsible business house or you, your note endorsed.

No. 8.

797 J. C. Webster, Vice-Pres.; M. G. Bulkeley, Pres.; H. W. St. John, Actuary; J. L. English, Sec'y. C. E. Gilbert, Ass't Sec'y.

(Cut of building)

ÆTNA LIFE INSURANCE COMPANY,

HARTFORD, Conn., September 27, 1898.

Messrs. Page, Dennis & Co.,
231 Broadway, New York City, N. Y.

Gentlemen: Referring to your letter of the 19th inst., I have been considering the proposition made in your letter and fail to see wherein it is a very advantageous one—looking at it from the standpoint of a prospective agent.

798 No such proposition as the one you suggest was made by me; I simply suggested in a general way that I believed that I could do some business here for you were you to put me in a position to do so. It seems to me it is for you to give me an opportunity to see what can be done before asking me to invest $70 merely for the purpose of having a machine here to show to prospective purchasers. I have no use now for a machine, my office here being well equipped. I don't know that it is necessary in order to start the business here to have a sample machine, as the catalogue seems to describe it fully, but if in your own interest you felt

a sample machine should be in Hartford, it seems 799
to me you should be willing and glad to send me a machine on a trial for 60 days; during that time I could feel my way along, and if the business seemed to warrant the investment, it would be time enough to arrage for purchasing the sample. In the meantime the only use the machine would be put to would be to show it, which would certainly be worth something to you. I would be giving up my time in doing the work. Besides, even were I in the market to buy a machine, I could get from even the old standard machine which I have used for years and know all about a reasonable trial, if I asked it, so that in the case of a machine about which nothing is known, a trial would be the most natural 800
thing to ask—to be offered, in any case, even if no agency was contemplated. If you desire to send a trial you may do so, and as to my responsibility I can refer you to the Aetna and also to Norcross Brothers of Worcester, Mass. (Mr. O. W. Norcross). I am not particular about having a trial machine, as I think I can get along for the present without it, and if you think I am correct in this, if you will send me complete information—such as an Agent should have to "talk" the machine intelligently, I will start in and see what can be done.

When I have a prospective customer and feel they should have a machine to examine, I can give you particulars, and if you think well of it you 801
could send a trial along, I to follow it up here.

Let me know how this strikes you.

I have been addressing my correspondence to the firm of Page, Dennis & Co. I notice from your letter-head both names—Page, Dennis & Co. and the Remington-Sholes Co. are used, while in your catalogue the announcement is made that the Howe Scale Company are the Sales Agents with offices in New York City, &c. Kindly advise me if I should not perhaps deal direct with the Howe Scale Company inasmuch as I am desirous of arranging for a

802 general agency. Of course, I cannot afford to pay a profit to other dealers if I can buy direct. Of course, in selling a new machine it is necessary to give a discount to users. What is the usual discount given to users of a single machine and what to users of several, say ten or more? Give me complete information and post me fully so that I may be able to talk intelligently.

Let me hear from you by return mail, and you will very much oblige,

Yours very truly,

W. M. SCHEUMAKER.

803

804

**Complainant's Ex. Remington-Sholes Company Seddon Letter, Sept. 28, 1898.** 805

Address all communications to the firm.
Telephone 839 Franklin.

W. DE SAUSSURE TRENHOLM,
Manager Typewriter Dept.

Cable Address, "Squog" New York.
A. B. C. Code,
(4th Edition)

Rem- Page, Dennis & Co., Sho.

Cut of Machine.

341 Broadway, New York. 806

TYPEWRITER.

Manufactured by

THE REMINGTON-SHOLES CO.

New York, N. Y., Sept. 28, 1898.

W. M. Scheumaker, Esq.,
Ætna Life Insurance Co.,
Hartford, Conn.

Dear Sir:—

Your letter of the 27th, to hand and carefully noted. We are right in the midst of re-organizing our office and, therefore, will have to delay the matter of taking up the Agency question with you. 807

The writer will try to make a personal call, with a machine, on you in about two weeks and go over the matter in a personal interview.

Hereafter you will deal direct with the Remington-Sholes Company as per the signature on this Letter, to whom kindly address all your future correspondence to.

Sincerely hoping that you will come to some amicable arrangement, we remain,

Yours very truly,
REMINGTON-SHOLES CO.,
H. I. SEDDON, Mgr.

808 No. 9.

J. C. Webster, Vice-Pres.; M. G. Bulkeley, Pres; H. W. St. John, Actuary; J. L. English, Secretary; C. E. Gilbert, Ass't Sec'y.
(Cut of Building.)

ÆTNA LIFE INSURANCE COMPANY,

HARTFORD, CONN., Nov. 1, 1898.

Remington-Sholes Company,
341 Broadway, New York City.

Gentlemen:

Referring to your favor of the 28th September, I beg to state that I have been looking daily for that
809 intended visit of your Mr. Seddon with the sample machine that he was going to make in the "course of a couple of weeks." Now, I am quite disappointed in not receiving that visit—here I have been talking the "Rem-Sholes" (in the parlance of the street gamin) into its "seventh heaven," to my friends in town here, telling them your manager was agoing to call on me shortly with a machine, which I should have the pleasure of showing them, and, if possible, selling them. I don't see what grounds you have for meriting me this treatment—especially when it is for the benefit of the cause that I take up the agency as well as a pecuniary gain for myself. I
810 think if I had opened negotiations direct with the Howe Scale people, the thing would have been closed long ago, and I would have had a dozen "Rem-Sholes" sold here in town. Here only last week I had an opportunity where I could have placed eight machines—this sale the Remington people secured. Time is precious, my dear sirs, and if we are going to do anything it is wise that we should be about it.

Please let me hear from you by return mail.

Yours truly,

W. M. SCHEUMAKER.

No. 10. 811

NOVEMBER 2, 1898.

Mr. W. M. Scheumaker,
care Ætna Life Ins. Co.
Hartford, Conn.

DEAR SIR:

Your favor at hand and noted, and we have wired our Mr. Seddon to call upon you regarding the same, as he is in Hartford, unless he should have left there before he received our message.

We note the interest you have taken in our machine, and if you are prepared to handle our business for us in an aggressive way, providing other arrangements have not already been made, we see no reason why we cannot arrange with you; however, we will leave this with Mr. Seddon, and should he not see you, kindly let us know. 812

Yours very truly,
REMINGTON-SHOLES COMPANY.
(Signed) G. W. Baldwin.

No. 12.

NOVEMBER 19, 1898.

Mr. W. M. Scheumaker,
care Ætna Life Insurance Company,
Hartford, Conn.

DEAR SIR:—

Your letter of the 16th has been awaiting my return for attention. In reply beg to state that I can only reiterate my remarks while in Hartford, viz.: That you will have to purchase a machine as a sample, and if you do this we will give you a discount that would naturally fall to an order of 10 machines, viz. 35%, 30 days, or 5% extra for cash. 813

Our machine is not known as the Remington Standard or have we any connection with the Remington Standard Typewriter, our machine is known as the Rem-Sho, manufactured by the the Remington Sholes Co. Regarding a history of our machine, you will find it embodied in the catalogue which we send you under separate cover.

814 If you should comply with the former portion of this letter, and purchase a machine as a sample, we would give you a contract as exclusive dealer for our machine at Hartford; further territory we could not give you at this writing, and could not hold out an inducement to give you the entire State of Connecticut, for an indefinite future, but if you prove successful in Hartford, we may be tempted to gradually increase your radius of territory.

Would be pleased to hear from you,

Yours very truly,

Remington-Sholes Company,

(Signed) S. J. SEDDON.

815 ———

**Complainant's Ex. Remington-Sholes Letter Nov. 2, 1898.**

Rem-Sho Ribbons

C. N. Fay, President.
F. H. Head, Vice President.
F. Remington, General Manager.
J. V. Paulsen, Secretary and Treasurer.

Rem-Sho Carbons.

Remington-Sholes Company.

Rem- Cut of Machine Sho

Main Office and Factory,
127 Rees Street, Chicago,

816 TYPEWRITER.

Address Correspondence to Branch Office,

H. I. Seddon, Manager.
Branch Office,
341 Broadway,
New York, N. Y., Nov. 2, '98.

Mr. W. N. Scheumaker,
c/o Ætna Life Ins. Co.,
Hartford, Conn.

Dear Sir:

Your favor at hand and noted, and we have wired our Mr. Seddon to call upon you regarding the same, as he is in Hartford, unless he should have left there before he received our message.

We note the interest you have taken in our machine, and if you are prepared to handle our business for us in an aggressive way, providing other arrangements have not already been made, we see no reason why we cannot arrange with you. However, we will leave this with Mr. Seddon, and should he not see you kindly let us know. 817

Yours very truly,

Remington-Sholes Company,
G. W. BALDWIN.

We carry a full line of typewriter supplies.

---

This exhibit consists of letters of recommendation of the Rem-Sho machine printed and circulated by the Remington-Sholes Company. In several of these letters complainant's machine is referred to as the "Remington." 818

THE NEW REM-SHO.
TYPEWRITER.

Cut of Machine.

Has an Interchangeable Wide Paper Carriage.

Only Standard Typewriter made in Chicago.

819

Manufactured by
REMINGTON-SHOLES COMPANY,
Chicago, City Office,
48-50 Lake St.

820 **Stipulations.**

It is stipulated that at the several dates when said Carcaba caused advertisements of typewriting machines to be published in the St. Augustine *Daily Herald* he (the said Carcaba) was a dealer in merchandise and was offering for sale the so-called "Rem-Sho" typewriters, manufactured by the Remington-Sholes Company of Chicago, and by said Company sold to said Carcaba, and that at such times the said Carcaba was the local dealer for the sale of the said Rem-Sho typewriting machine for the territory including the city of St. Augustine, Florida, together with the territory running half
821 way thence to Jacksonville and half way thence to Tampa in said State of Florida; that said Carcaba was originally appointed as such dealer by Page, Dennis & Co., of 341 Broadway, New York City, and that from and after February 18, 1899, said dealership was continued by the Remington-Sholes Company. It is admitted by counsel for Defendant that the electrotypes for the illustrations of typewriting machines appearing in the said several advertisements in the St. Augustine Daily Herald were furnished to said Carcaba by the Remington-Sholes Company, on the first day of November, 1898.

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It is admitted by counsel for Defendant that the
822 M. S. Postscript appearing upon the letter offered in evidence as "Complainant's Exhibit Seddon-Romig Letter July 19, 1898" is in the genuine handwriting of said Romig.

---

Counsel for Defendant admits that at the time this suit was brought the Howe Scale Company of 1886, was the general sales agent for the United States of the Remington-Sholes Company and further admits that said Remington-Sholes Company has assumed the defence of this litigation and has agreed to pay all expenses incident to the defence thereof, and has agreed to protect and save harmless the said Howe Scale Company of 1886, with respect thereto.

No. 1A.

Complainant's Exhibit.—Brooks Patent.

2 Sheets—Sheet 1.

# B. A. BROOKS.

## Type-Writing Machine.

No. 202,923. Patented April 30, 1878.

Fig. 1.

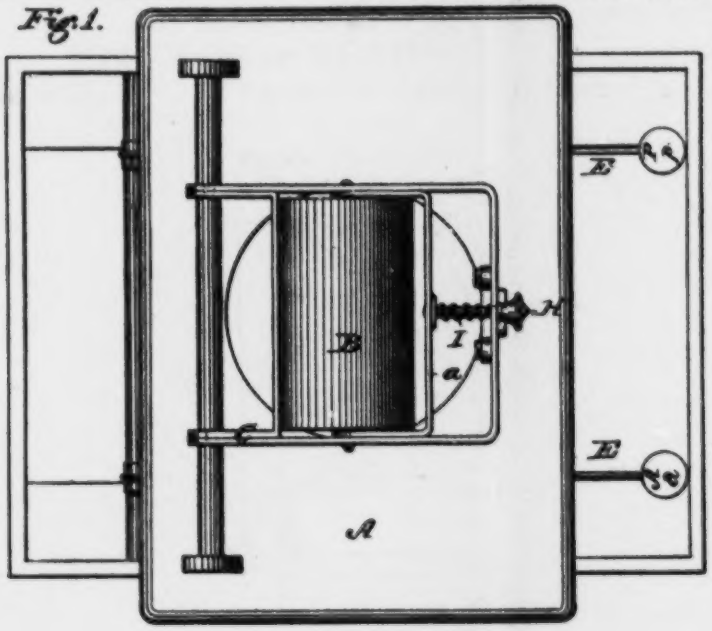
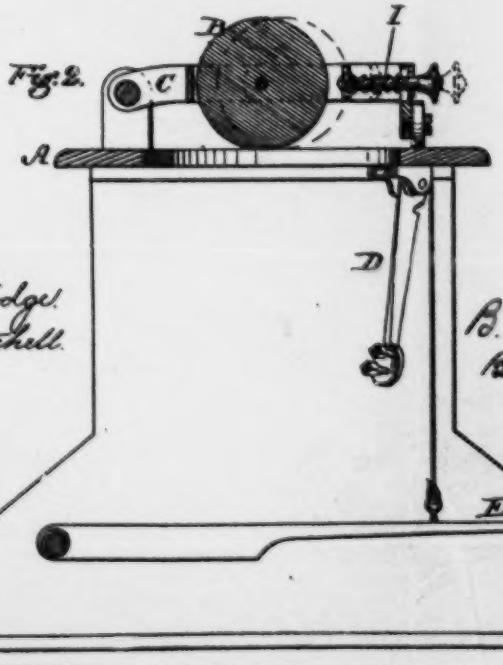



Fig. 2.




Witnesses:
Will A. Dodge
Jonas Twitchell

Inventor:
B. A. Brooks
By his Atty
Dodge & Son

No. 1B.

Complainant's Exhibit.—

2 Sheets—Sheet 2

B. A. BROOKS.

Type-Writing Machine.

No. 202,923. Patented April 30, 1878.

Fig. 3.

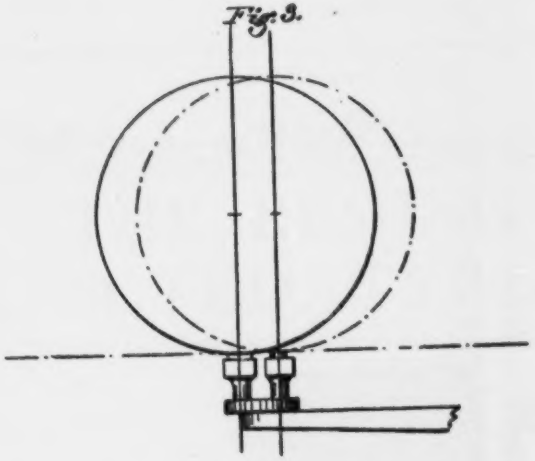
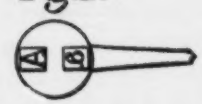


Fig. 4.




Witnesses:
Will H. Dodge
Donn Tintchell.

Inventor:
B. A Brooks
By his attys
Dodge & Son.

No. 2.

Complainant's Exhibit.—Remington Advertisement in Scribner's Magazine for August, 1881.

SOLD BY ALL DEALERS THROUGHOUT THE WORLD.

# THE REMINGTON PERFECTED TYPE-WRITER.

For Business Correspondence and Professional Writing.

Writes faster and better than the most expert penman, and can be used at sight.

EVERY MACHINE GUARANTEED.

It has stood the test of nearly ten years' use, and is

## CONSTANTLY INCREASING IN POPULARITY.

Its success is wonderful. Send for new circular with names and testimonials of recent patrons.

38 Madison St., Chicago.
124 South 7th St., Philadelphia.

E. REMINGTON & SONS,
281 and 283 Broadway, New-York.

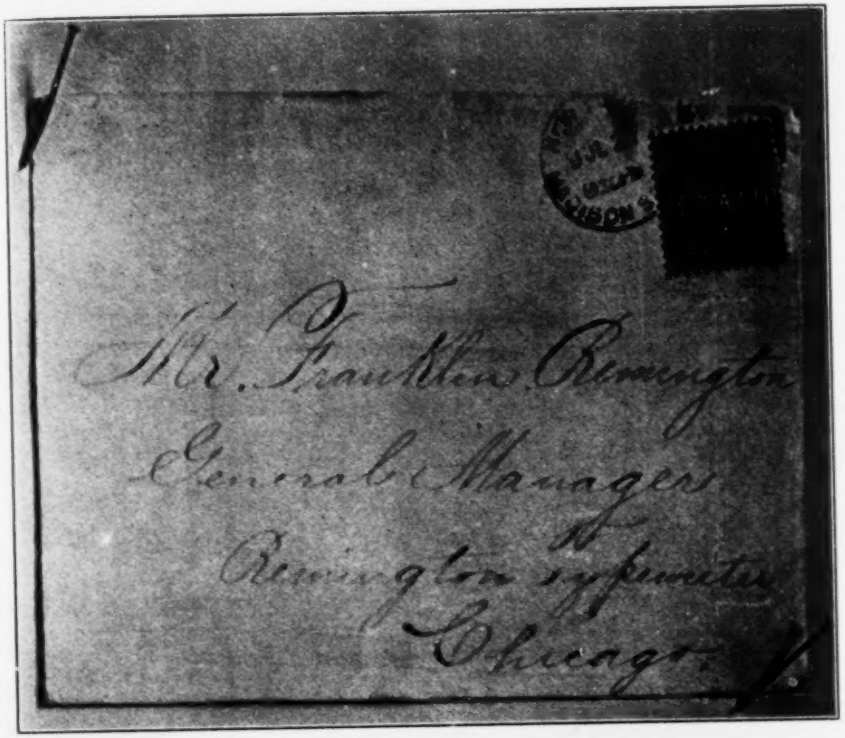
Th MacKinnon Pen Fluid P

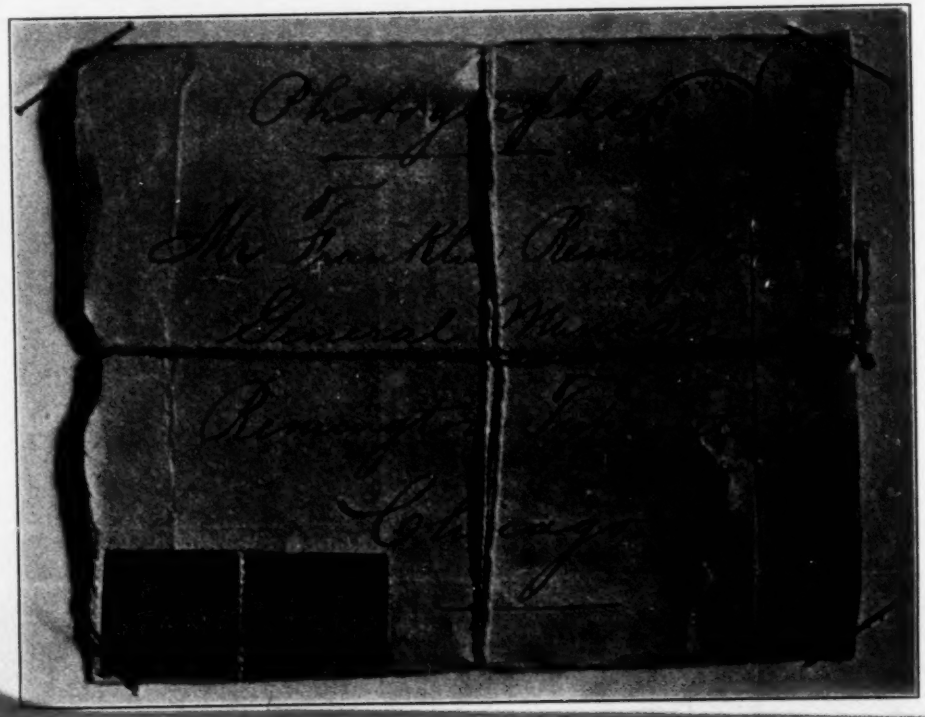
**No. 3.**

**Complainant's Exhibit.—Photograph Z. G. Sholes Machine.**

**No. 4.**

**Complainant's Exhibit.—Franklin Remington Envelopes.**



No. 5.

Complainant's Exhibit.—C. R. Springer Letter and Envelope, Aug. 24, '99.

THE POSTAL COMPANY'S SYSTEM REACHES ALL IMPORTANT POINTS IN THE UNITED STATES AND BRITISH AMERICA, AND via COMMERCIAL CABLES, TO ALL THE WORLD.

FORM 10. CH.

# TELEGRAM

## POSTAL TELEGRAPH-CABLE COMPANY.

This Company transmits and delivers messages subject to the terms and conditions printed on the back of this blank.

WILLIAM H. BAKER, V. P. & Gen'l Manager. JOHN O. STEVENS, Secretary. ALBERT B. CHANDLER, President.

*Received at* *Chicago.*

Chicago Ill.Aug.24th-99.

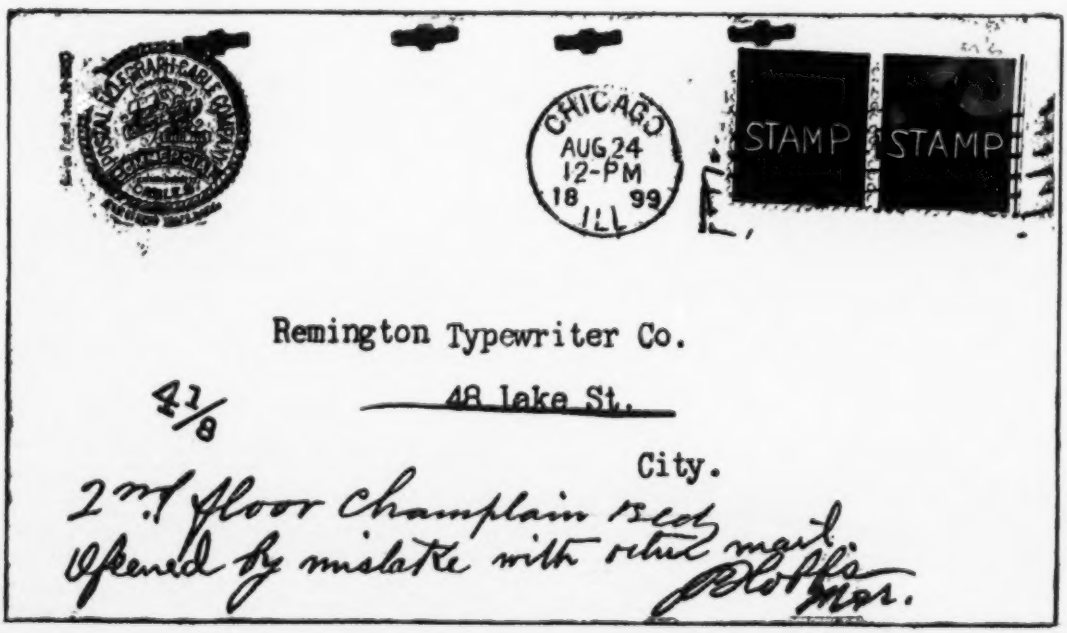
Remington Typewriter Co.
48 Lake St.
Chicago Ill.

Gentlemen:-

I am thinking of buying a typewriter and would like to have you send a representative of your company here to quote prices, terms,and etc.

I have a Caligraph typewriter I would like to exchange as part payment and want to buy on monthly payments.

Yours very truly,
C.R.Springer,
Mgr.Postal Tel.C.Co.
6301 Wentworth Ave.
City.



**No. 6A.**

**Complainant's Exhibit.—Dillingham-Remington-Sholes Letters and Envelope.**

Office

# Business University

Wallace J. Dillingham, Principal.

RECEIVED
AUG 26 1898
Answered

Warsaw, Indiana, Aug. 24. 1898.

...n Typewriter Co.,
...icago, Ill

...en, — I sent you an order for
...ine (rental) nearly a week
...hy have I not heard from you?

Very respectfully,

Wallace J. Dillingham.

No. 6A.

Complainant's Exhibit.—Dillingham-Remington-Sholes Letters and Envelope.

Office

Business University

Wallace J. Dillingham, Principal.

RECEIVED
AUG 26 1898
ANSD. DIV'D BY

Refer to W S & B

Warsaw, Indiana, Aug. 24, 1898.

Remington Typewriter Co.,
Chicago, Ill

Gentlemen, — I sent you an order for a machine (rental) nearly a week ago. Why have I not heard from you?

Very respectfully,

Wallace J. Dillingham.

No. 6B.

THE REMINGTON-SHOLES CO.
CHICAGO, ILL.

Wyckoff, Seamans & Benedict.

#146 Monroe St.,

C I T Y.

No. 80.

G. N. FAY, PRESY. F. H. HEAD, V. PRESY. F. REMINGTON, GEN'L MGR. J. V. PAULSEN, SEC'Y AND TREAS.

REMING COMPANY

REM- SHO

TYPEWRITER.

TELEPHONE NO. NORTH 572
CABLE ADDRESS: "REM-SHO" CHICAGO

Aug. 26, 1898.

Messrs. Wyckoff, Seamans & Benedict,

#146 Monroe St.,

C i t y.

Dear Sirs:

Enclosed please find letter which we imagine must be intended for you, as the sender is unknown to us.

Very truly yours,

Remington-Sholes Company.

J. V. Paulsen

Encl.

F.F.

No. 7.

Complainant's Exhibit.—Ginn & Company Letter and Envelope, August 21, 1899.

EDWIN GINN
D. A. PLIMPTON — FRED B. GINN
LEWIS PARKHURST — G. B. WHITE
O. P. GORANT — RALPH L. HAYES
T. W. GILSON — F. H. AMBROSE
H. H. HILTON

# Ginn & Company, Publishers

OF

## SCHOOL AND COLLEGE TEXT-BOOKS

BOSTON. NEW YORK. CHICAGO. LONDON.

W. T. FIELD, AGENT.

*Dictated by* *378-388 Wabash Ave., Chicago,* Aug. 21, 1899.

Dear Mr. Kellogg:

We haven't as yet received the typewriter desk which was ordered for this office, and need it very badly. Can't you hurry it up?

Very truly yours,

W. T. Field.

Return to GINN & COMPANY,
378-388 Wabash Ave., CHICAGO, ILL.
If not delivered within 5 days.

CHICAGO AUG 21 PM 1899

Remington Typewriter Co.,

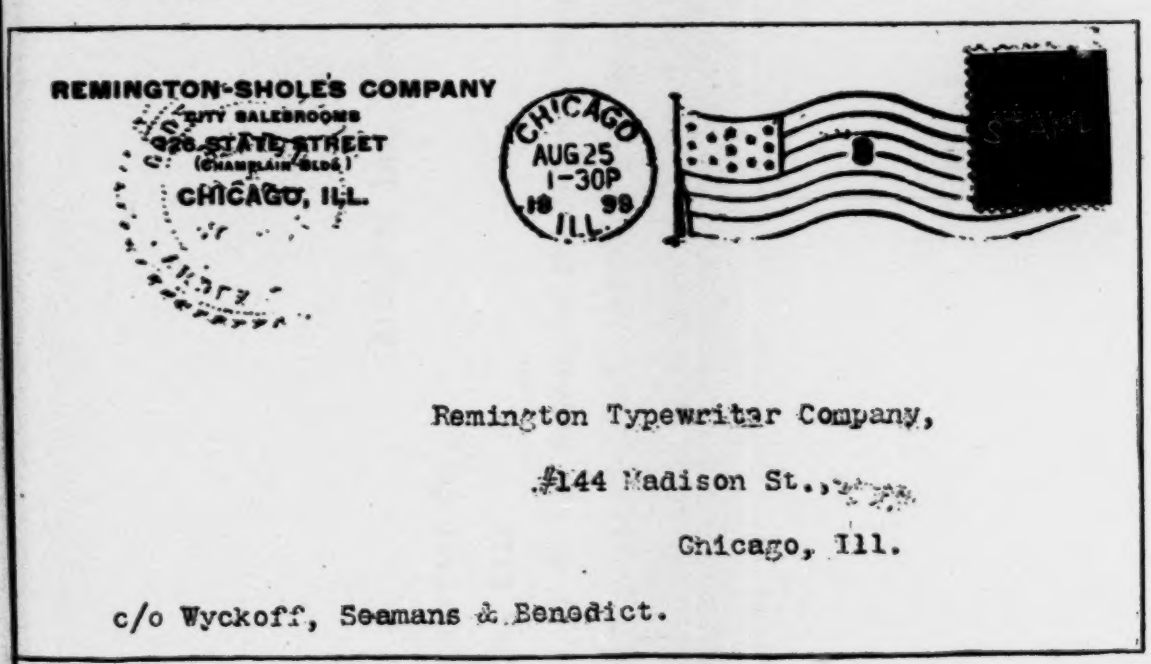
City.

Mr. Kellogg.

Opened by Remington Clerk

No. 8.

Complainant's Exhibit.—Remington-Sholes Company Envelope, August 25, 1899.




Remington Typewriter Company,

#144 Madison St.,

Chicago, Ill.

c/o Wyckoff, Seamans & Benedict.

No. 9.

**Complainant's Exhibit.—Mumaw Letter and Envelope.**

RECEIVED
NOV 1 1899
ANSD. DIST. TR.

Elkhart, Ind., October 31st, '99.

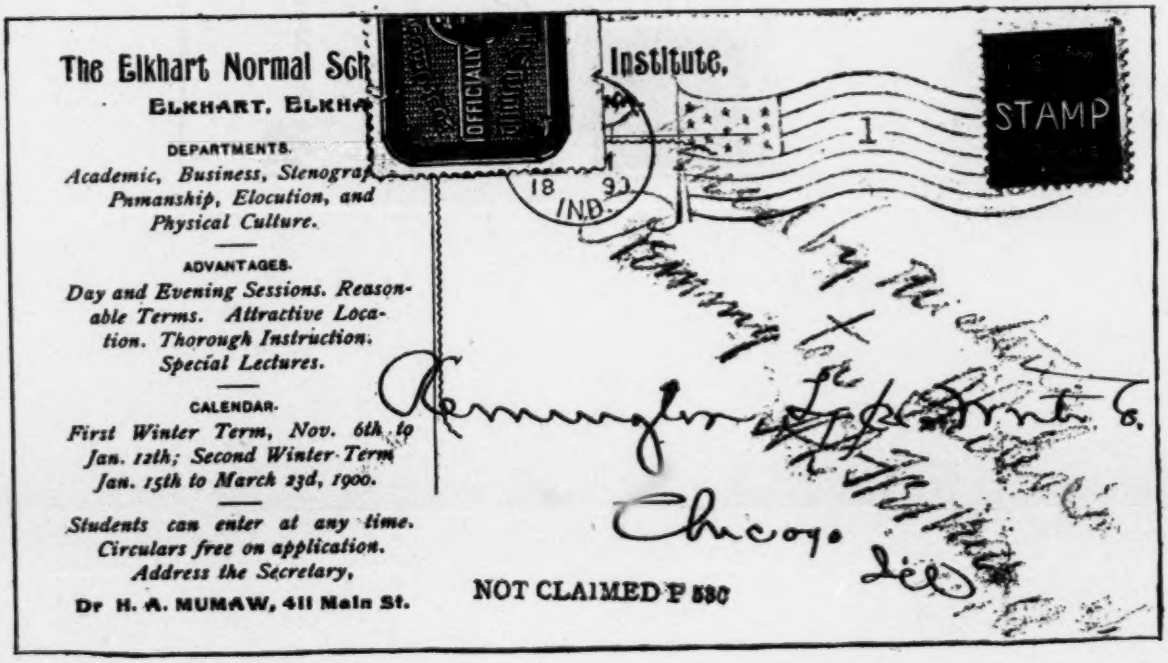
The Remington Typewriter Co.,

Chicago, Ill.

Gentlemen: I do not expect to get through with your electros as long as the school exists, and therefore ask that they remain in my possession indefinitely, either for love or money.

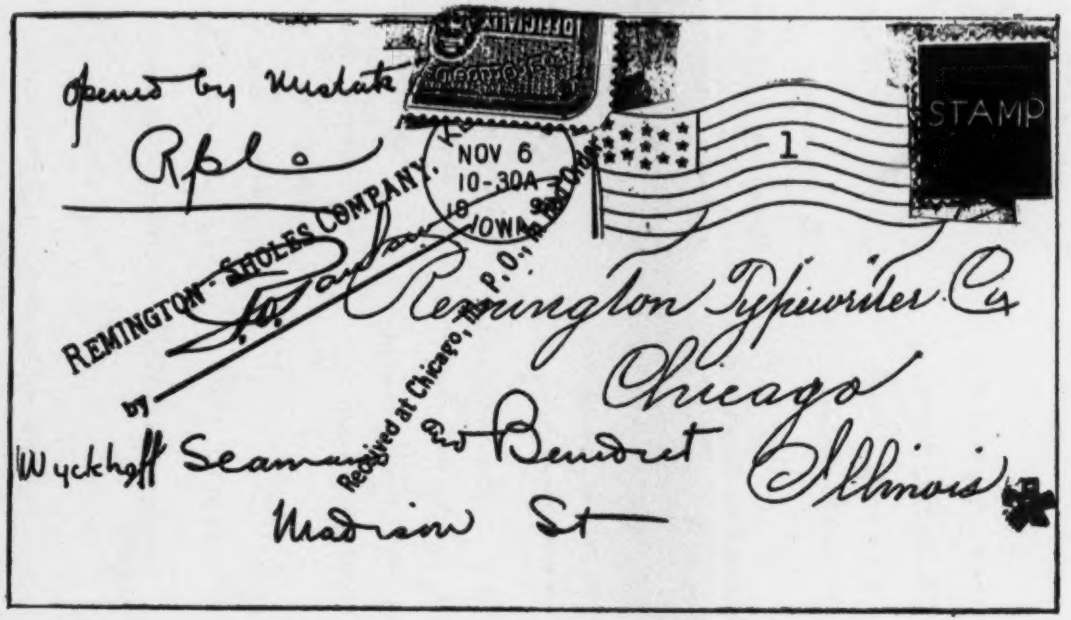
Very respectfully yours,

H A Mumaw



**No. 10.**

**Complainant's Exhibit.—Keokuk Envelope.**




Principal.

No. 11.
Complainant's Exhibit.—Phillips Letter.

336 North
Quinnipiac Ave. Received

Remington Agency JAN 9 1900
City Ans.

Gents. Some six weeks ago I bought a new Rem. Typewriter at your New York office, giving in exchange an old model #6— For various reasons, I have not been at all satisfied with the trade, the new machine, not giving anything like the satisfaction derived by the old—

I now beg to inquire if I cannot in some way get back my old typewriter or one of the same series or model—

In as much as I paid a heavy difference for the new one and have only used it about six weeks, It seems that we ought to exchange with a financial difference in my favor.

However I would be pleased to receive one of your salesmen any evening at my residence

Please write and state which evening I may expect him as my time is so occupied that an appointment is quite necessary if I am to meet him

Respectfully
Hco Phillips

Jan 8/900

Principal.

No. 12.

Complainant's Exhibit.—Hansen Letter 1.

Book-keeping,
Banking,
Office Work,
Business Practice,
Business Correspondence,
Penmanship,
Spelling,
Commercial Law.

Arithmetic,
Arithmetic, Mental,
Rapid Calculations,
Shorthand,
Court Reporting,
Typewriting,
Mimeographing.

# Spencerian Business and Shorthand School.

*Prepares young men and women for the everyday duties of Business Life, for positions as Office Assistants, Bank, Bill, Shipping Clerks, Cashiers, Correspondents, Bookkeepers, Stenographers, Typewriters, Court Reporters, Etc.*

*Waukegan, Ill.,* Nov. 15, *189* 8.

RECEIVED
NOV 16 1898
ANSD. 11/16
DIGT'D BY

Remington Typewriter Co.,

Chicago, Ill.

Gentlemen:

Enclosed please find m. o. for $10., which kindly credit to my account.

Please send receipt for same, and oblige,

Truly yours,

C. H A N S E N ,

Principal.

No. 13.
Complainant's Exhibit.—Hansen Letter 2.

Book-keeping,
Banking,
Office Work,
Business Practice,
Business Correspondence,
Penmanship,
Spelling,
Commercial Law.

Arithmetic,
Arithmetic, Mental,
Rapid Calculations,
Shorthand,
Court Reporting,
Typewriting,
Mimeographing.

# Spencerian Business and Shorthand School.

*Prepares young men and women for the everyday duties of Business Life, for positions as Office Assistants, Bank, Bill, Shipping Clerks, Cashiers, Correspondents, Bookkeepers, Stenographers, Typewriters, Court Reporters, Etc.*

*Waukegan, Ill.,* Nov. 18, *189* 8.

Remington Typewriter Co.,

Chicago, Ill.

Gentlemen:

I sent you m. o, for $10. on the 15 th inst. that the Post Office in Chicago delivered to the Remington Shoales Co. by mistake.

I enclose the m. o. herewith.

Please send receipt and oblige,

Yours truly,

C. HANSEN.

Kindly tell Mr. Farnham to call at his earliest convenience as the machine does not work very well, and greatly oblige,
C. H

No. 14.
Complainant's Exhibit.—Hansen Letter 8.

Book-k[illegible],
Banking,
Office Work,
Business Practice,
Business Correspondence,
Penmanship,
Spelling,
Commercial Law,
Arithmetic,
Arithmetic, Mental,
Rapid Calculations,
Shorthand,
Court Reporting,
Typewriting,
Mimeographing.

# Spencerian Business College
Waukegan, Ill.

*Prepares young men and women for the everyday duties of Business Life, for positions as Office Assistants, Bank, Bill, Shipping Clerks, Cashiers, Correspondents, Bookkeepers, Stenographers, Typewriters, Court Reporters, Etc.*

119 GENESEE ST.,

Waukegan, Ill., Dec. 12, 1898

Wykoff, Seamans and Benedict,
Chicago, Ill.

Gentlemen:

On about the 10th of last month I addressed a letter to the Remington Typewriter Co., Chicago, containing a remittance of $10 I did not hear from you with your usual promptness, but received a letter from the Rem-Sho Co., Chicago, acknowledging the receipt of the money-order. I was surprised, as the address on the envelope and in the letter in no way resembled the name of the Rem-Sho firm. I may have omitted the street number of your firm I am not quite certain about that, although I usually insert it.

I then asked the Rem-Sho Co. to return my remittance, which they did, but they did not return my letter nor envelope addressed to you.

I will write the Rem-Sho Co. and ask them to please return my letter and should they do so I shall mail same to you.

I will also send you then the letter which they sent me with my remittance.

Very respectfully,

C. Hansen

Principal S. B. C.

No. 15.

Complainant's Exhibit.—Hansen Letter 4.

Book-keeping,
Banking,
Office Work,
Business Practice,
Business Correspondence,
Penmanship,
Spelling,
Commercial Law,
Arithmetic,
Arithmetic, Mental,
Rapid Calculations,
Shorthand,
Court Reporting,
Typewriting,
Mimeographing.

# Spencerian Business College

Waukegan, Ill.

*Prepares young men and women for the everyday duties of Business Life, for positions as Office Assistants, Bank, Bill, Shipping Clerks, Cashiers, Correspondents, Bookkeepers, Stenographers, Typewriters, Court Reporters, Etc.*

119 GENESEE ST.,

Waukegan, Ill., Dec. 22, 189 8

Remington Typewriter Company,

Chicago, Ill.

Gentlemen:-

I enclose the letter asked for by you, delivered through mistake by the post office to Shoals Company.

I spoke to Mr. Farnham last week, when here, that I needed another machine for my students. Can you furnish same to me now?

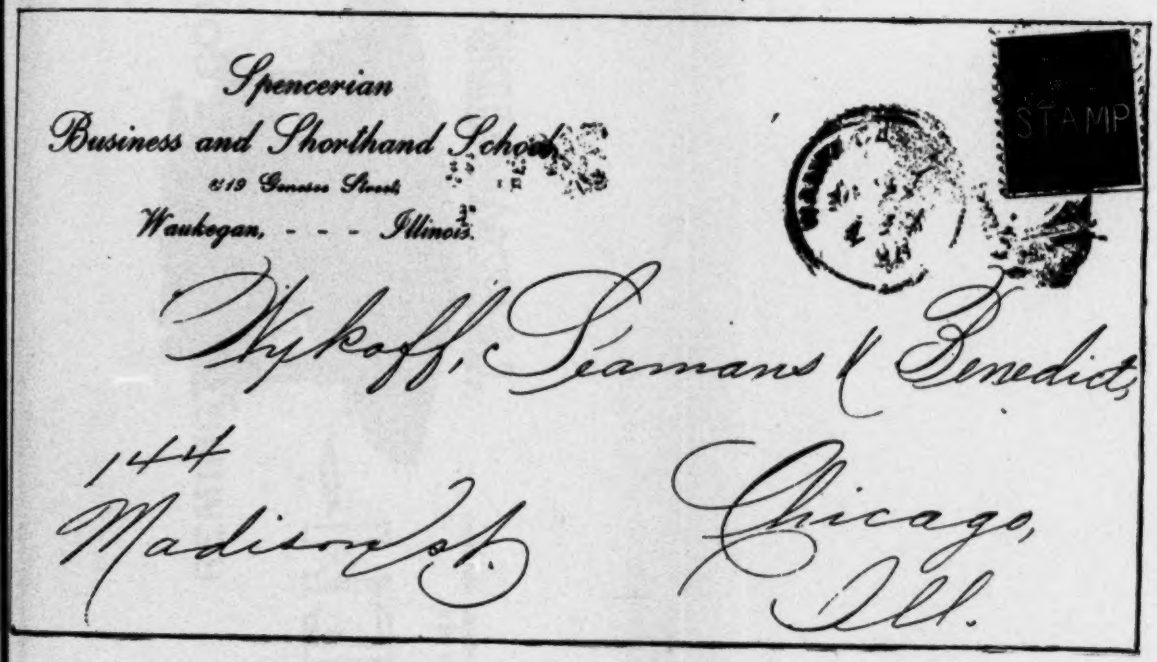
Yours truly,

C Hansen, Grip,

944

**No. 16.**

**Complainant's Exhibit.—Hansen Letter 5.**



Complainant's Exhibit.—Hansen Remington-Sholes Letter, December 15, 1898.

C. N. FAY, PRES'T. F. H. HEAD, V. PRES'T. F. REMINGTON, GEN. MGR. J. V. PAULSEN, SEC'Y AND TREAS.

REMING[illegible] COMPANY

REM- SHO

TYPEWRITER.

TELEPHONE NO. NORTH 672
CABLE ADDRESS: "REM-SHO" CHICAGO

Dec. 15, 1898.

Mr. C. H. Hansen,

119 Genesee Street,

Waukegan, Ill.

Dear Sir:

We have your favor of the 14th, and are pleased to enclose herewith yours of the 15th ult. with which you enclosed your money order for $10.00.

In order to make a clean sweep it would perhaps be well for you to return our receipt for the $10.00 referred to.

Very truly yours,

Remington-Sholes Company.

E.F,

Encl.

No. 18.

Complainant's Exhibit.—Potter Letter and Envelope, October 18, 1898.

Form 537

# CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

Decorah Ia. Oct. 16 1898.

The Remington T. W. Co.

Chicago Ill.

Gents:

Have you on hand at present any second hand Remington Machines if so will you please give me price Ect?

and oblige

Yours truly.

A. V. Potter

Chicago, Milwaukee & St. Paul R'y Co.

CALMAR OCT 18 1898 IOWA

STAMP

Wyckoff Seamans and Benedict

Remington Type W Co

Chicago

Opened by R.P.Co.

No. 19.

Complainant's Exhibit.—Remington Letter, July 7, 1899.


Chicago
New York
Philadelphia
Pittsburg
Cincinnati
St. Louis
Minneapolis
San Francisco
Portland, Me.
Indianapolis
Grand Rapids
Milwaukee

G. N. FAY, PRESt.
F. H. HEAD, V. PRESt.

F. REMINGTON, GEN'L MGR.
J. V. PAULSEN SEC'Y AND TREAS.

London
Paris
Berlin
Vienna
Hamburg
Copenhagen
Moscow
St. Petersburg
Bombay
Sydney
Auckland
Montreal

REMINGTON COMPANY

REM-SHO TYPEWRITER.

CABLE CODES: A.B.C. 4TH EDITION. DISCOVERY. LIEBER'S STANDARD.
CABLE ADDRESS: "REM-SHO" CHICAGO.

MEMBERS OF THE NATIONAL ASSN. OF MANUFACTURERS OF THE U. S.


July 7, 1899.

Messrs. Wyckoff, Seamans & Benedict,

#144 Madison St.,

Chicago, Ill.

Dear Sirs--

I am very much obliged to you for forwarding the letter addressed to me, which reached your office by mistake. I understand perfectly how it is possible to open leters accidently in the mail when improperly addressed.

Very truly yours,

F. Remington

Sten. W. A. W.

No. 20.
Complainant's Exhibit.—Crandall Letter.

CABLE ADDRESS: WRYPEACH, NEW YORK.

# REMINGTON STANDARD TYPEWRITER

FINE LINEN PAPERS AND TYPEWRITER SUPPLIES OF EVERY KIND.—SEND FOR SAMPLE BOOK.

*New York, Boston, Philadelphia, Washington, Baltimore, Chicago, Buffalo, Rochester, St. Paul, St. Louis, Indianapolis, Milwaukee, Minneapolis, Denver, Kansas City, Cleveland, Cincinnati. Paris, France. London, England, Manchester.*

Our Goods are Sold in all the Principal Cities of the World.

WYCKOFF, SEAMANS & BENEDICT.

CHICAGO, ILL.

144 MADISON STREET.

Copy.

Dec. 7, 1899.

Remington Sholes Typewriter Co.,

127 Rees St., City.

Gentlemen:--

We enclose you herewith a letter addressed on the envelope to the "Remington Typewriter Co.", as a large portion of our mail is received, and on the inside to the "Remington Sholes Typewriter Co.", from D. A. Leffingwell Jr. & Co., Ashland, Ky. We therefore forward it to you, and trust you will overlook the fact that by the misdirection of the envelope we were led to break the seal.

Very truly yours,

Wyckoff, Seamans & Benedict,

per C.

No. 21.

**Complainant's Exhibit.—Leffingwell Letter and Envelope.**

D. A. LEFFINGWELL, Jr. JOHN W. CHAFFEE

D. A. LEFFINGWELL, JR. & CO.,

Wholesale and Retail Dealers in

**Groceries, Provisions and General Merchandise,**

116 E. Greenup Avenue.

Telephone 31.

Ashland, Ky., Dec 5th/99

Remington Shales Typewriter Co
Chicago Ill

Gentlemen

We intend purchasing a second hand typewriter, and desire to know at once if you have a late model of a Remington on hand, and at what price. We expect to pay Cash. We wish to hear from you direct and do not wish a new machine at the present. Concerning supply will oblige giving full details

Yours respectfully
D. A. Leffingwell Jr. & Co

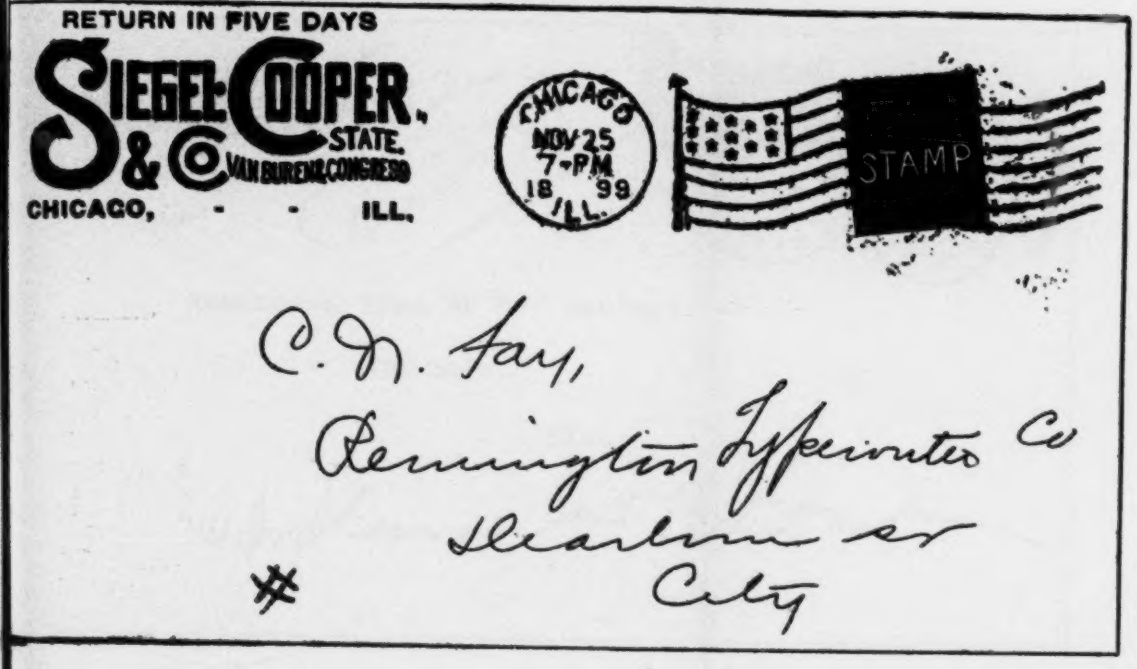
If not delivered in Five Days, return to
D. A. Leffingwell, Jr. & Co.,
Wholesale and Retail Dealers in
Groceries, Provisions and General Merchandise,
ASHLAND, KY.

ASHLAND, KY. DEC 5 1 PM 99

Remington Typewriter Co
Chicago Ill.

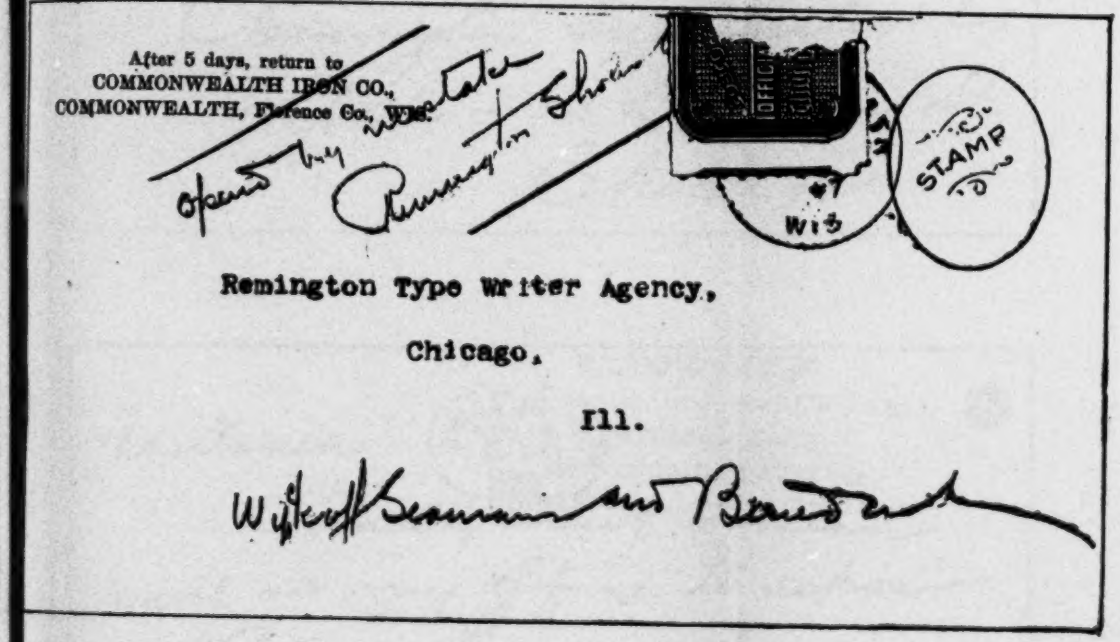
No. 22.

Complainant's Exhibit.—Siegel-Cooper Envelope.



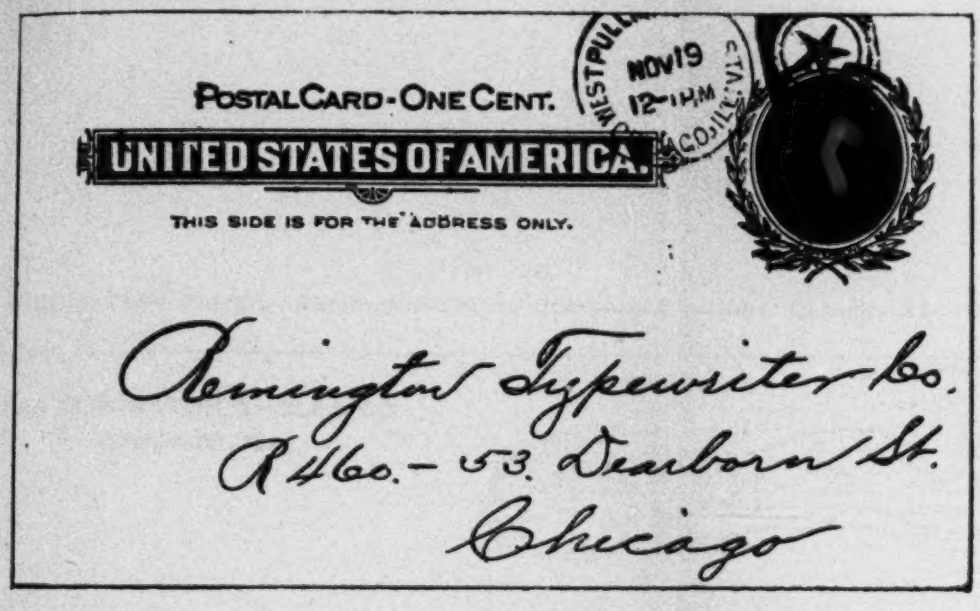
No. 23.

Complainant's Exhibit.—Commonwealth Iron Co. Envelope.



No. 24.

Complainant's Exhibit.—Richard J. Ton Postal Card.



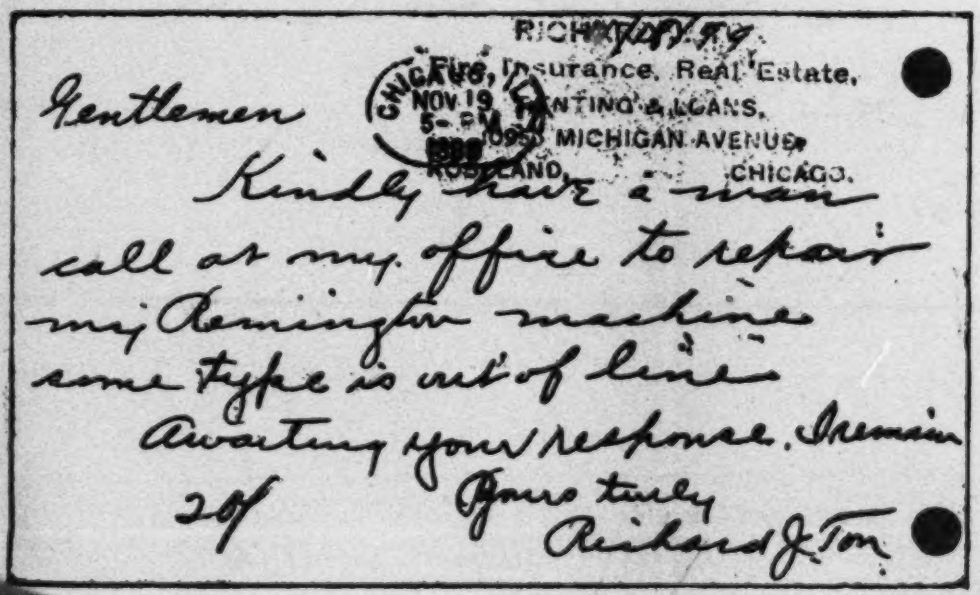
POSTAL CARD - ONE CENT.

UNITED STATES OF AMERICA.

THIS SIDE IS FOR THE ADDRESS ONLY.

WEST PULL... NOV 19 12-1 P.M. CHICAGO, ILL. STA.

Remington Typewriter Co.
R 460. - 53. Dearborn St.
Chicago



RICHARD J. TON
Fire, Insurance, Real Estate,
RENTING & LOANS,
1095 MICHIGAN AVENUE,
ROSELAND, CHICAGO.

CHICAGO, ILL. NOV 19 5-PM 1899

Gentlemen

Kindly have a man call at my office to repair my Remington machine some type is out of line

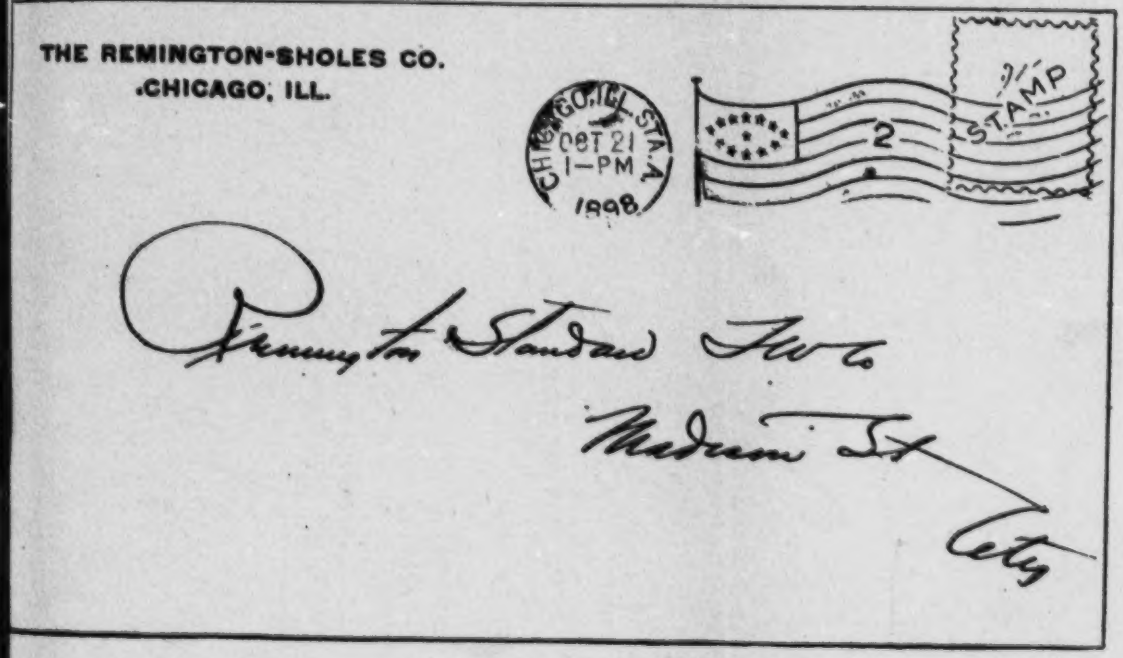
Awaiting your response. I remain

Yours truly
Richard J. Ton

20/

No. 25.

Complainant's Exhibit.—Remington-Sholes Company Envelope, October 21, 1898.



Complainant's Exhibit.—Illinois Central Railroad Company Freight Bill.

FREIGHT BILL. Form 164 K 4.

Rem. Typewriter Co

137 Fulton St

Chicago, 10/4 1899

Pro. No. 687

Destination.

To Illinois Central Railroad Company, Dr.

"KANKAKEE LINE."

W.-B. No. 206 Date 10/2

Car No. 1455 Int. CCC&StL

For Freight and Advances, from Chicago

Via 2660 CCC

Con. Line Reference } Point of Shipment Pro. No. W.-B. Series and No. Date

Original Car No. and Initial Consignor R & Co

| ARTICLES AND MARKS. | Weight. | Rate. | Freight. | Advances. |
|---|---|---|---|---|
| 1 Typewriter - | | | | |
| 1 Key Type. | 200 | 46 | 80 | |
| | | | | |
| | | | | |
| | | |

No. 27.

Complainant's Exhibit.—Metropolitan Life Insurance Co. Letter, Dec. 14, 1899.

FORM 112.

# Metropolitan Life Insurance Company,

(INCORPORATED BY THE STATE OF NEW YORK.)

Industrial Department.

JOHN R. HEGEMAN, President.
HALEY FISKE, Vice-President. GEORGE H. GASTON, Second Vice-President.
GEO. B. WOODWARD, Secretary. J. J. THOMPSON, Cashier and Assistant Secretary.
JAMES M. CRAIG, Actuary. JAMES S. ROBERTS, Assistant Secretary.
STEWART L. WOODFORD, Counsel. THOMAS H. WILLARD, M. D., Medical Examiner.

BRANCH OFFICE, 3917 TO 3921 LANCASTER AVENUE.

R. M. GIFFORD, Supt. (PHILADELPHIA WEST.)

Replying to

Div. letter

of 189

*Philadelphia, Pa.*, Oct 13th, 1899.

Remington & Co.

Dear Sir:-

Please send to the Metropolitan Life Ins Co.

#3917 Lancaster Ave, to put machine in order, and oblige.

Yours Very Truly.

R. M. Gifford

Supt.

No. 28.

Complainant's Exhibit.—Berlingske Political Advertising Tiding.

No. 29.

Complainant's Exhibit.—St. Joseph Sunday Herald, April 30, 1899.

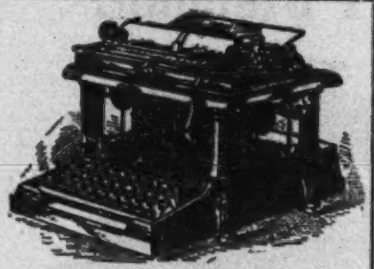
and monopolies and to provide proced- | servative and clear-sighted majority


# REM-SHO

REMINGTON-SHOLES

## STANDARD TYPEWRITER

New Models, Nos. 4 and 5, $100 List. The finest Machines ever put on sale.



Call and examine, and test these new models.

EVERY MACHICE GUARANTEED

High-Class Goods

## DIAMOND SUPPLY CO.

Leading HIGH GRADE BICYCLES of America.
Repairing, Sundries, Renting.
319-321 North Third Street
St. Joseph, Mo.

A Machine

## Not in the Trust

WILL NOT COST YOU $100

As we make a

VERY LIBERAL DISCOUNT FOR CASH.

A STANDARD HIGH-GRADE MACHINE

Guaranteed equal to the best. Remarkable for its Simplicity, Lightness of Touch, and small number of parts. Ball Bearing, automatically locked basket shift, permanent alignment, universal key board.

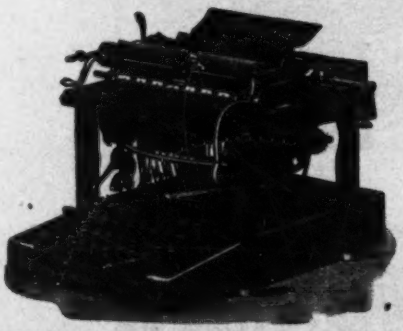
At A PRICE you have wished for.

No. 30.

Complainant's Exhibit.—St. Joseph Daily Herald, Tuesday, April 25, 1899.

# Remington

## Standard Typewriter.



**WYCKOFF, SEAMANS & BENEDICT**

619 Edmond St., St. Joseph, Mo.
105 W. 9th St., Kansas City, Mo.

You are invited to Call, Examine, and Test the

NEW MODELS

**Nos. 6, 7, and 8 (wide carriage)**

We Guarantee Every Paragon Typewriter Ribbon Sold.

Fine Linen Typewriter Papers

High Quality Typewriter Supplies

**No. 31.**
**Complainant's Exhibit.—Russian News, May 30, 1899.**

No. 32.

Complainant's Exhibit.—Wyckoff, Seamans & Benedict Advertisement Nos. 1 and 2.

No. 1.

No. 2.

No. 33A.

Complainant's Exhibit.—Remington Imperial Booklet and Translation, Dec. 14, 1899.

**275 р.** ПОСЛѢДНЯЯ НОВОСТЬ! **275 р.**

# Пишущая Машина

Не смѣшивать съ машиной „РЕМИНГТОНЪ-СПЕЦІАЛЬ" выпущенной фабрикой Виккровъ, Симансъ и Бенедиктъ нѣсколько лѣтъ тому назадъ.

ОБРАТИТЬ ВНИМАНІЕ НА ПРЕИМУЩЕСТВА и НОВЫЯ ПРИСПОСОБЛЕНІЯ ОТЛИЧАЮЩІЯ МАШИНУ „РЕМИНГТОНЪ-ИМПЕРІАЛЬ".

## РЕМИНГТОНЪ-ИМПЕРІАЛЬ

фабрики «Ремингтонъ-Шолесъ» въ Чикаго—(Америка).

Единственный Представитель въ С.-Петербургѣ **П. Н. СКУРИДИНЪ** Владимірскій пр., д. 4.

No. 33B.

# РЕМИНГТОНЪ-ИМПЕРІАЛЬ.

Уже давно замѣчалась необходимость усовершенствованія пишущей машины „Ремингтонъ-Стандартъ“, такъ какъ неустойчивость ея каретки, деревянные рычаги и сложность механизма приводили къ частой порчѣ, вызывая необходимость столь же частыхъ починокъ.

Фабрика „Ремингтонъ-Стандартъ“ давно уже не принадлежитъ ни одному изъ Ремингтоновъ и перешла въ новыя руки гг. „Викровъ, Сименсъ и Бенедиктъ“, въ то время, какъ Ф. Ремингтонъ и изобрѣтатель всѣхъ Ремингтоновъ—Шолесъ выйдя изъ дѣла и основавъ самостоятельную фабрику внесли въ нее традиціи прежде весьма солидно поставленнаго дѣла.

Всѣ усилія фабрикъ „Викровъ, Сименсъ и Бенедиктъ“ свелись къ машинѣ „Ремингтонъ-Спеціаль“. Но и эта машина по своей сложности, по недостатку знаковъ препинанія, какъ равно вслѣдствіе тугой клавіатуры на практикѣ оказалась далеко несовершенной.

Съ выходомъ изъ дѣла „Ремингтонъ-Стандартъ“ главнаго ея изобрѣтателя Шоллеса утратилась послѣдняя возможность дальнѣйшаго усовершенствованія пишущихъ машинъ этой фабрики.

Какъ извѣстно сынъ Ремингтона—Ф. Ремингтонъ совмѣстно съ главнымъ директоромъ Шоллесъ основали въ Чикаго специальную фабрику пишущихъ машинъ, являясь серьезными конкурентами и даже, болѣе того, мало-по-малу вытѣсняющими „Ремингтонъ-Спеціаль“ на міровомъ рынкѣ.

Послѣднею моделью выпущенною въ настоящемъ году, является „**Ремингтонъ-Имперіаль**“.

## № 33С.

### Преимущества этой новой машины сводятся къ слѣдующему:

1) Легкій и бесшумный ходъ клавіатуры.

2) Удобная и вѣрная перестановка для напечатанія заглавныхъ буквъ, производящаяся бесшумнымъ и правильнымъ ходомъ на шарикахъ.

3) Возможность во всякое время имѣть передъ собою ввозимое лишь легкимъ прикосновеніемъ пальца къ резиновому валику, поднимающемуся посредствомъ пружины.

4) Движеніе красящей ленты, которая регулируется помощью простаго приспособленія, дающаго въ результатѣ экономію въ расходѣ на ленту и недопускающаго неправильности въ движеніи ея.

5) Валикъ легко снимается и свободно переносится вмѣстѣ съ работой, не вынимая листа съ русской машины на иностранную и наоборотъ.

6) Возможность замѣнить каретку для бумаги обыкновеннаго формата, другою для бумаги большаго размѣра до 14 дюймовъ ширины.

7) Замѣна резиновыхъ лентъ, служившихъ прежде для поддержки бумаги, металлическими пластинками, недопускающими сдвигаться бумагу во время писанія.

8) Въ „Ремингтонъ-Имперіалѣ" значительно больше знаковъ.

9) Простой и прочный механизмъ.

10) Ясный и ровный шрифтъ алфавита.

11) Изготовленіе всѣхъ частей машины изъ стали или другаго металла, гарантирующаго прочность отъ колебанія температуры.

12) Стоимость этой машины, не смотря на всѣ усовершенствованія, та же, какъ и цѣна прежнихъ Ремингтоновъ 275 руб.

Войдя въ положеніе большинства недостаточныхъ тружениковъ и труженицъ, Торгово-промышленное Агентство (Владимірскій, 4), рѣшило допустить разсрочку.

13) Рычаги до сихъ поръ дѣлались изъ дерева, что приводило къ порчѣ, преждевременной расшатанности машины и къ чувствительности машины къ температурѣ. Все это устранено при машинѣ „Ремингтонъ-Имперіаль", гдѣ впервые съ успѣхомъ примѣнены металлическіе рычаги.

14) Поледѣлители у машины „Ремингтонъ-Имперіаль" находятся впереди и быстро переставляются по желанію пишущаго.

15) Листъ свободно вставляется и не кривитъ бумаги.

Не смотря на всѣ разсрочки и льготы платежа, съ покупателей не взимается никакого дисконтнаго процента.

Торгово-промышленное Агентство (Владимірскій, 4) принимаетъ за качество проданныхъ машинъ полную отвѣтственность, ручаясь за прочность таковыхъ и выдавая письменное въ этомъ поручительство на 3 года.

No. 33E.

No. 34.

Complainant's Exhibit.—St. Petersburg Gazette and Advertisement.

Торгово-промышленное Агентство СПБ. Владимірск. пр., д. 4, телеф. 511.

# НЕ ПОКУПАИТЕ УСТАРѢВШИХЪ МОДЕЛЕЙ!

ЕДИНСТВЕННОЕ ПРЕДСТАВИТЕЛЬСТВО СПБ. ВЛАДИМІРСК. ПР., 4.

НЕ ОСМОТРѢВЪ НОВѢЙШУЮ МОДЕЛЬ,

„РЕМИНГТОНЪ-ИМПЕРІАЛЬ"

ЭТО ЛУЧШАЯ ВЪ МІРѢ ПИШУЩАЯ МАШИНА.

НЕ СМѢШИВАТЬ СЪ РЕМИНГТОНЪ-СПЕЦІАЛЬ.

Въ короткое время мы получили заказы отъ Министерствъ, шести банковъ и многихъ кабинетовъ и салоновъ переписки.

Громадный спросъ на „Ремингтонъ-Имперіаль" заставляетъ насъ имѣть ихъ на складѣ въ большомъ количествѣ. Машины монтируются прекрасно въ собственной мастерской и продаются съ ручательствомъ на три года. Требуйте каталоги. 21847

**Торгово-Промышленное Агентство СПБ. Впадимірскій, 4.**

Пишущая машина

No. 35.

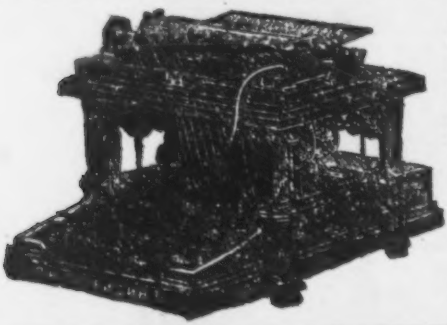
Complainant's Exhibit.—Novoe Vremya Advertisement.

A. 41843

Не покупайте устарѣвшихъ моделей!

**Послѣднее слово техники—пишущая машина**

# РЕМИНГТОНЪ-ИМПЕРІАЛЬ НОВѢЙШАЯ МОДЕЛЬ



Эта машина въ короткое время завоевала общее одобреніе и предпочтительно передъ другими машинами, введена во многихъ правительственныхъ учрежденіяхъ Россіи.

Единственное представительство

П. Н. Скуридинъ.

СПБ., Владимірскій, 4.

Просятъ не смѣшивать съ «Ремингтонъ-Спеціаль» выпущенной нѣсколько лѣтъ тому назадъ.

А 102767 2—1

Чай паштетная и кондитерская Л. К. АСТАФЬЕВА

No. 36A.

Wyckoff, Seamans & Benedict vs Howe Scale Co of '76
Compltg. Ex. Newald - Kondrup Letter

Lynden Evans
Notary Public

April 20th. 99.

J. Schaal, Berlin W.

Mr. Vilhelm Kondrup

48 Gothersgade, C o p e n h a g e n .

Dear Sir,

We are in receipt of your favor of the 18th. inst. and in reply we wish to say, that we have already a Representative for Denmark, namely the Kontorinventar Skrivemaskine Co., Kiobmagerade No. 18, Copenhagen. We have referred your enquiry to them and they will give you the quotation asked for.

We trust that you will favor our Representative with your orders and remain

Very Truly Yours
Remington Sholes Co. m. b. H.
Henry Newald Manager.

No. 36B.

FILIALEN WIEN, LEIPZIG ST. PETERSBURG, MOSKAU,

HAMBURG. KÖLN a/Rh. FRANKFURT a/M.

KONIGSBERG. STETTIN. ZURICH.

**Remington-Sholes Co** m. b. H.
**Henry Newald, Manager**
**Berlin W. 33 Mohrenstrasse.**

Mr. Vilhelm Kondrup

48 Gothersgade

Copenhagen

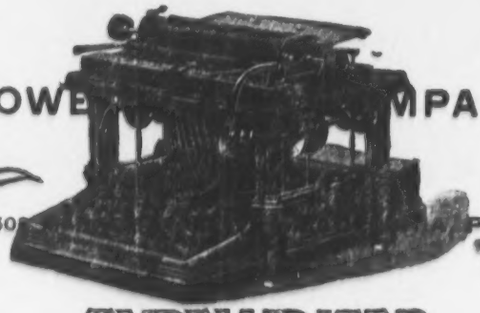
Dänemark

BRESLAU DÜSSELDORF, HANNOVER ELBING, ELBERFELD, BREMEN,

No. 37A.
Complainant's Exhibit.—Seddon-Romig Letter, July 19, 1898.

REM-SHO RIBBONS.

REM-SHO CARBONS.



HOWE [illegible] MPANY,

REM- [illegible] PA. SHO

TYPEWRITER.

MANUFACTURED BY THE
REMINGTON-SHOLES CO.,
CHICAGO, ILL.

ADDRESS ALL COMMUNICATIONS TO THE FIRM.
TELEPHONE 3002

H. I. SEDDON,
MANAGER T. W. DEPARTMENT

Philadelphia, Pa, July 19th, 1898.

J. A. Hood, Esq.,

Philadelphia, Pa,

Dear Sir:-

In compliance with your request to our Mr. Romig in your conversation with him to-day in which you asked that we send you a full description of our machine, together with its merits and all facts relating to it and what it is doing in the typewriter field, would state that the "Rem-Sho" machine is one of the very highest standard and combines the best points of all others. As you will notice by a careful perusal of our catalogue, some of the principal features of the machine are: Universal Remington Keyboard, Perfect and Permanent Alignment, New and Beautiful design and finish (being bronze instead of enamel, which latter will crack and wear off), Rigid Roller Bearing Interchangeable Carriage, the Interchangeable Carriage being a distinct feature of this machine which no other machine in the market has, Extra Platens, by the use of which a harder platen can be put on the machine in a moments time where heavy manifold work is required, Platen is always locked down, thereby presenting a more rigid striking surface and consequently guaranteeing better alignment than on any other machine, Straight Away Ribbon Feed

Margin Stops on the front of the machine and in full sight of the operator, Right-hand Rack Release, the absence of springs wherever it is possible to obviate the use of same, depending on gravity instead to accomplish the same results and in fact the whole machine is so simple in construction that a child could operate it.

In regard to what the machine is doing, would state that we are at present supplying the Mexican Government with our machines, have received a preliminary order from our Berlin Representative for 160 machines a month and 35 machines per month to the London office. The former Remington Agent in Holland has left them and come into our camp and the Remington Agent in South Africa has ordered a quantity of our machines and recently we have been awarded the contract from the United States Government for 100 machines for the Department of Agriculture and 30 machines for the Department of Justice.

As to terms, etc. would state that the best we can quote you on this machine is $62.50 net.

We enclose you a copy of a letter received from the T. Eaton Company an importing house of Toronto, Canada.

Hoping to be favored with your order, we remain,

Yours very truly,

Remington-Sholes Company,

H. D. Denson Mgr.

P.S. It might prove of interest to you to know that the Remington machine at present is not manufactured by the Remington Co but by Messrs Wyckoff Seamans & Benedict as that this is really the Remington machine

The R. S. Co.
per Romig.

No. 38.

Complainant's Exhibit.—Rem-Sho Advertisement in Export Edition of Scientific American.

# Máquina de Escribir Rem-Sho.

Fabricado y de Venta por

**THE REMINGTON-SHOLES CO.**

CHICAGO, ILL., U. S. A.

La única máquina de escribir fabricada hoy por uno de la familia **REMINGTON.** Es fuerte y exacta, y digna de confianza, representando la **segunda generación** de fabricantes de máquinas de escribir que llevan este nombre célebre.

**Queremos agentes por todo el mundo.**

**Pídanse cátalogos ilustrados.**

# REM-SHO TYPEWRITER.

The only typewriter manufactured to-day by a **REMINGTON.** Strong, reliable, and accurate, it represents the **SECOND GENERATION** of typewriter manufacturers bearing this great name.

**AGENTS WANTED THROUGHOUT THE WORLD.**

**SEND FOR ILLUSTRATED CATALOGUE.**

Manufactured and sold by

**THE REMINGTON-SHOLES CO.,**

**of CHICAGO, ILL., U. S. A.**

MOES TURNER PENSSELAER

# Consulate of the United States of America

at

## Copenhagen

**Denmark.**

I, ..... Consul of the United States of America at Copenhagen, Denmark, do hereby certify the seal of Steen. A. Bille Esq. of Copenhagen

and the signature of Steen. A. Bille Esq. Royal Danish translator and interpreter

to the instrument of writing hereto annexed, are true and genuine, and as such are entitled to full faith and credit.

**In Testimony whereof,** I have hereunto subscribed my name and affixed my Seal of office, this 21. day of February A. D. 1899

Fee No. 37 received 7.50

№

J. C. Ingersoll

Consul of the United States of America.

Herved tillade vi os at fremsende vort Prospect over de af os forhandlede Remington-Skrivemaskiner; kaldet

R E M I N G T O N - S H O L E S ,

C H I C A G O .

Disse Maskiner ere opfundne af den unge Mr. F. Remington og Mr. Sholes i Forening og ere en betydelig Forbedring paa de ældre Systemers Omraade

Prisen for Maskinerne ere Kr: 400,oo og yde vi for hver Maskine en betryggende Garanti, samt give personlig Vejledning.

Haabende, at De venligst vil give os Tilladelse til at stille Dem en Maskine til fri Prøve paa Deres eget Kontor, uden noget Ansvar eller Forpligtelse for Dem, forvente vi at høre nærmere desangaaende og tegne vi

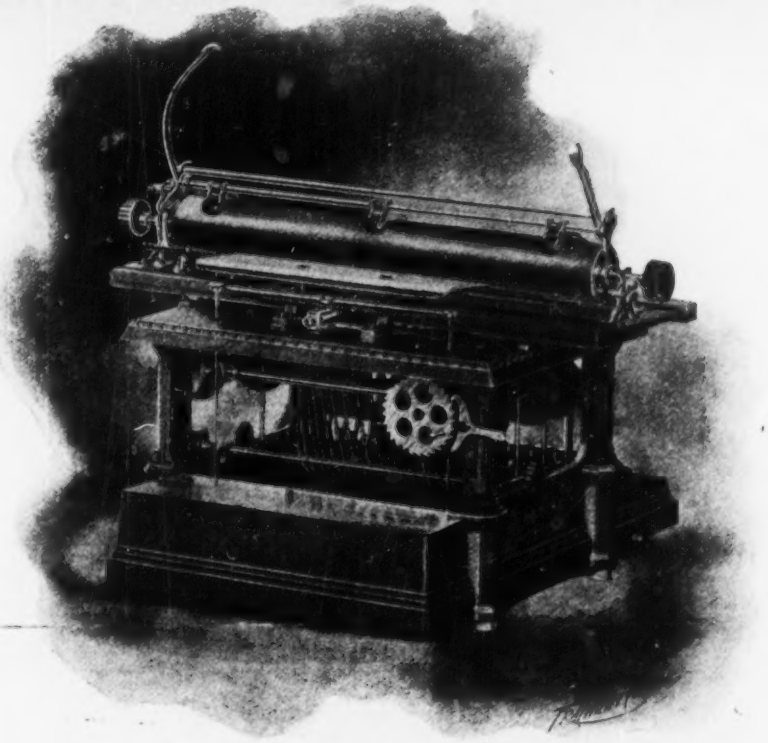
Med Højagtelse

Kontorinventar og Skrivemaskine Co.

AKTIESELSKAB.

Axelevysohn C. F. M. Knudsen

# Remington-Sholes Kr. 450,00



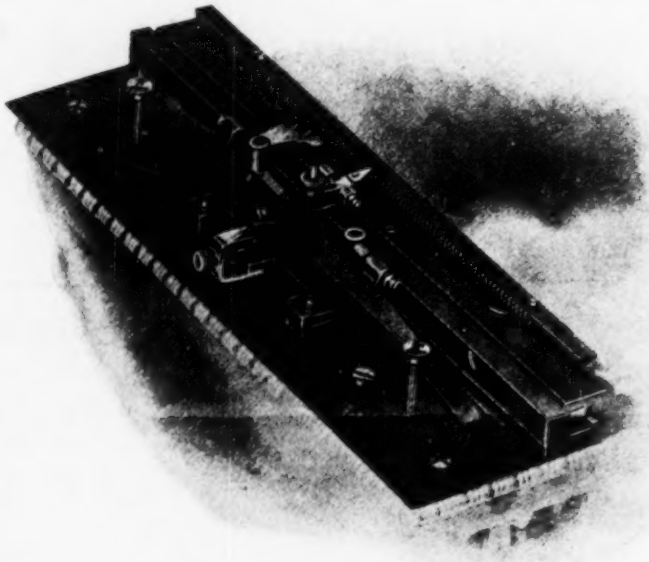
Bagsiden af den nye Model Remington med den brede Valse.

Remington-Sholes udvidede Alfabet.

No. 39D.

# Remington-Sholes Kr. 400,00

Remington-Sholes set forfra med opløftet Valse.



Maskinens overordentlig simple Skiftningsmekanisme.

Typearmen.

**Vor nye Model 1898**

# Kontorinventar & Skrivemaskine Co.

Aktieselskab.

Kjøbmagergade 18
**Nordiske Forlags Ejendom**

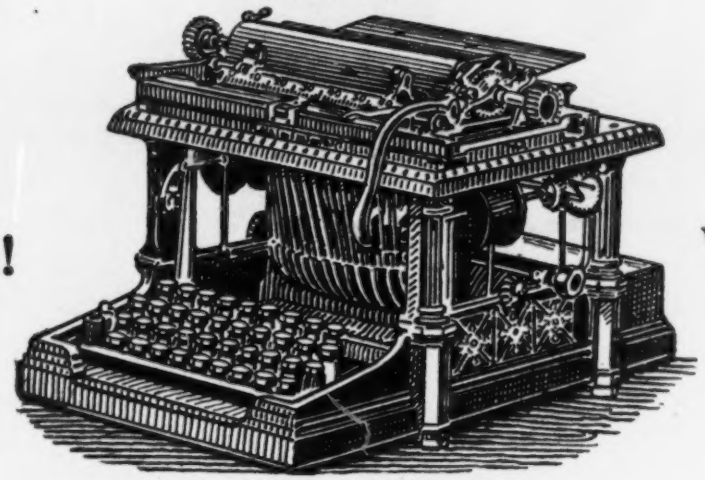
Kjøbenhavn K.
**Telefon Nr. 5385**

# Remington = Sholes.

Maskinerne leveres frit paa Prøve

**Veni!**

**Vidi!**



**Vici!**

Maskinerne leveres frit paa Prøve

**Ny Model „Remington"**

---

**Solideste Konstruktion**

**Letteste at behandle**

**Arbejder lydløst**

---

Gratis Undervisning i Maskinskrivning for Kjøberens Kontorpersonale.

Elever uddannes.

No. 40.

Complainant's Exhibit.—St. Augustine Daily Herald No. 1.

# Re-mem-ber THE name.

## The Remington-Sholes Standard Typewriter.

Built for durability, speed, manifolding and permanent allignment. Combining the leading features of the principle high grade machines, and adopted by the present World's Champion, C. H. M'Gurrin.

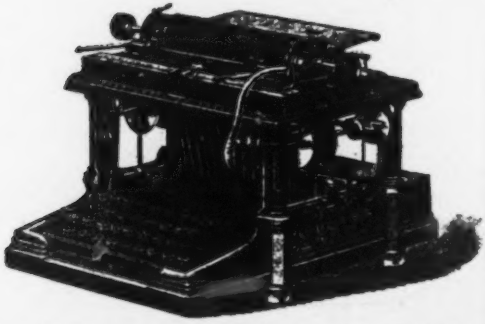
IT'S USE IS IT'S PROOF.

## Write for Catalogue.

WM. CARCABA, AGENT.
St. Augustine Fla.

No. 41.

Complainants' Exhibit.—Phonographic World, June, 1897.



# The "Rem-Sho" No. 2 and No. 3

Manufactured by

## The REMINGTON-SHOLES CO.,

127 Rees St., Chicago, Ill.

The '97 Models embody all the latest improvements. Only machine made with interchangeable wide carriage taking paper fourteen inches wide.

## HOWE SCALE CO. of RUTLAND, VT., General Sales Agents for U. S.

Twe

BEV

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"2U
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work ov
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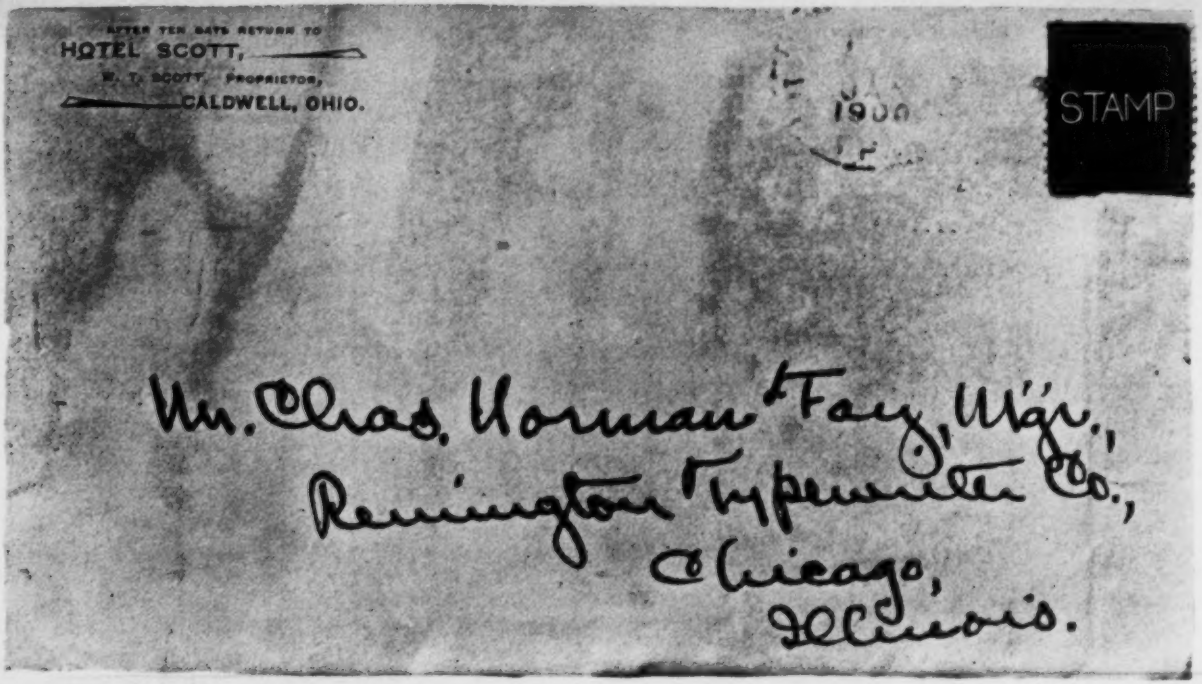
we hav
postage
WRITER

Complainant's Exhibit.—Caldwell, Ohio, Envelope.



No. 43A.

Complainant's Exhibit.—Russian Newspaper No. 338.

(Form No. 88.)

# FORM FOR AUTHENTICATION OF SIGNATURE.

Consulate of the United States,

Moscow. December 26th, 1899.

I, Samuel Smith Vice, Consul

of the United States at Moscow. Russia, do hereby certify that the signature of Peter J. Skwarcow, at the foot of the paper hereto annexed, is his true and genuine signature, made and acknowledged in my presence, and that the said Peter J. Skwarcow is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the Consulate at Moscow. Russia, this day and year next above written, and of the Independence of the United States the One hundred & twenty fourth.

Samuel Smith

U. S. Vice Consul

[Translation.]

## NOTICE TO THE HONORABLE PUBLIC.

On my arrival in Moscow from America I was informed that various false reports respecting my typewriters are being spread by unfair competitors.

I hereby declare that I have personally given official testimony to the American Consul as follows:

1. That I am the son of the original inventor and manufacturer of the "Remington" typewriter;

2. That I am the only descendant of Remington at the present time engaged in the manufacture of typewriters;

3. That all other machines bearing the name "Remington" are made and sold by other parties, who exclusively, in the interest of their own material advantage, make use of the name "Remington";

4. That my machines, manufactured in Chicago, are known here by the name of "Remington-Sholes," and should not be confounded with any other machines bearing the name "Remington";

5. That the only authorized agent for the sale of the "Remington-Sholes" in the whole of Russia is *T. I. Hagen*, trading in Moscow at house No. 3, Great Lubyanka.

GENERAL MANAGER OF THE REMINGTON-SHOLES CO.,
Signed, FRANKLIN REMINGTON.

Moscow, Nov. 26/8th December, 1899.

The signature of Franklin *Remington* has been attested by the U. S. *Consul*, and a translation made from the original by the Moscow Exchange *Notary*.

---

The above is a translation of an advertisement appearing in the "Russkie Listok" (Russian Newspaper), No. 338, of the 10/22d Dec., 1899.

I, the undersigned, Peter Skwarcow, sworn translator at the Court of Justice in Moscow, certify hereby that the above is a true and correct translation of an advertisement published in the above-named newspaper, which I duly examined.

Register № 1429
Moscow the 18th Dec. 1899
Sworn Translator
at the Court of Moscow
P. J. Skwarcow

No. 43С.

# КЪ СВѢДѢНІЮ

## ПОЧТЕННѢЙШЕЙ ПУБЛИКИ.

При пріѣздѣ моемъ въ МОСКВУ изъ АМЕРИКИ, я узналъ, что со стороны НЕДОБРОСОВѢСТНОЙ КОНКУРЕНЦІИ распространяются различные ложные слухи касающіеся моихъ пишущихъ машинъ.

Симъ объявляю, что я лично далъ оффиціальное показаніе, предъ Американскимъ Консуломъ въ МОСКВѢ, въ слѣдующемъ:

1) что я сынъ изобрѣтателя фабриканта пишущихъ машинъ „РЕМИНГТОНЪ"

2) что я единственный потомокъ РЕМИНГТОНА, въ настоящее время занимающійся производствомъ пишущихъ машинъ

3) что ВСѢ ПРОЧІЯ машины, носящія имя „РЕМИНГТОНЪ" изготовляются и продаются другими лицами, которые только съ цѣлью МАТЕРІАЛЬНОЙ ВЫГОДЫ, для себя пользуются именемъ „РЕМИНГТОНЪ"

4) что мои машины изготовляемыя въ ЧИКАГО, извѣстны здѣсь подъ именемъ „РЕМИНГТОНЪ-ШОЛЕСЪ" и не должны быть смѣшиваемы съ другими машинами носящими имя „Ремингтонъ"

5) что единственнымъ уполномоченнымъ агентомъ для продажи машинъ „РЕМИНГТОНЪ-ШОЛЕСЪ" для ВСЕЙ РОССІИ состоитъ Т. И. ГАГЕНЪ, торгующій въ Москвѣ на Большой Лубянкѣ, домъ № 3.

Главный Управляющій Компаніи Ремингтонъ-Шолесъ.

Подпись Франклинъ РЕМИНГТОНЪ.

Москва 26/8 Декабря 1899 г

Подпись руки Франклинъ Ремингтона засвидѣтельствована Консуломъ Американскихъ Соединенныхъ Штатовъ и переводъ сдѣланъ съ подлинника Моск. Бирж. Нотаріусомъ.

No. 44A.

Complainant's Exhibit.—Russian News of the Day.

(Form No. 88.)

# FORM FOR AUTHENTICATION OF SIGNATURE.

Consulate of the United States,

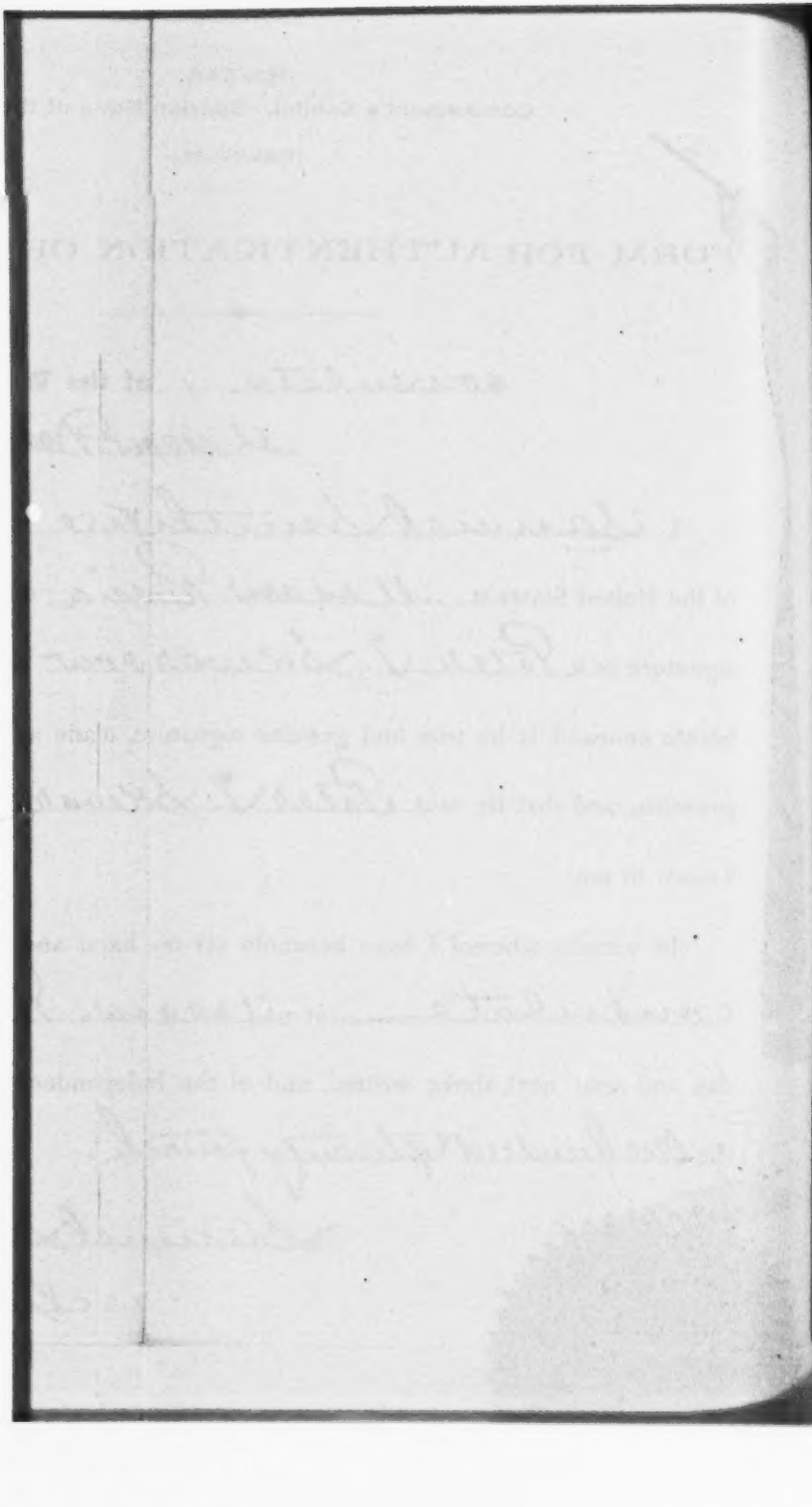
Moscow. December 23rd, 1899.

I, Samuel Smith Vice Consul of the United States at Moscow. Russia, do hereby certify that the signature of Peter J. Skwarcow, at the foot of the paper hereto annexed. is his true and genuine signature, made and acknowledged in my presence, and that the said Peter J. Skwarcow is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the Consulate at Moscow. Russia, this day and year next above written, and of the Independence of the United States the One hundred & twenty fourth.

Samuel Smith

U. S. C. Vice Consul



No. 44B.

[Translation.]

## REPLY TO THE CAUTION.

The "REMINGTON-SHOLES" typewriters which are sold in my stores and by my agents are genuine and not imitations.

Surpassing in merit all machines bearing the name Remington in consequence of their improved construction, and that the inventors of these machines, S. Sholes and Franklin Remington, are both the sons of the deceased manufacturers of the typewriters "Remington - Standard" and "Special."

---

These GENUINE "REMINGTONS," made by REMINGTON-SHOLES, are sold in Russia, and bear the firm name of T. I. HAGEN, Representative for the whole of Russia, Great Lubyanka, 3, and Smithbridge, Passage Dschamgaroff, 4, MOSCOW.

---

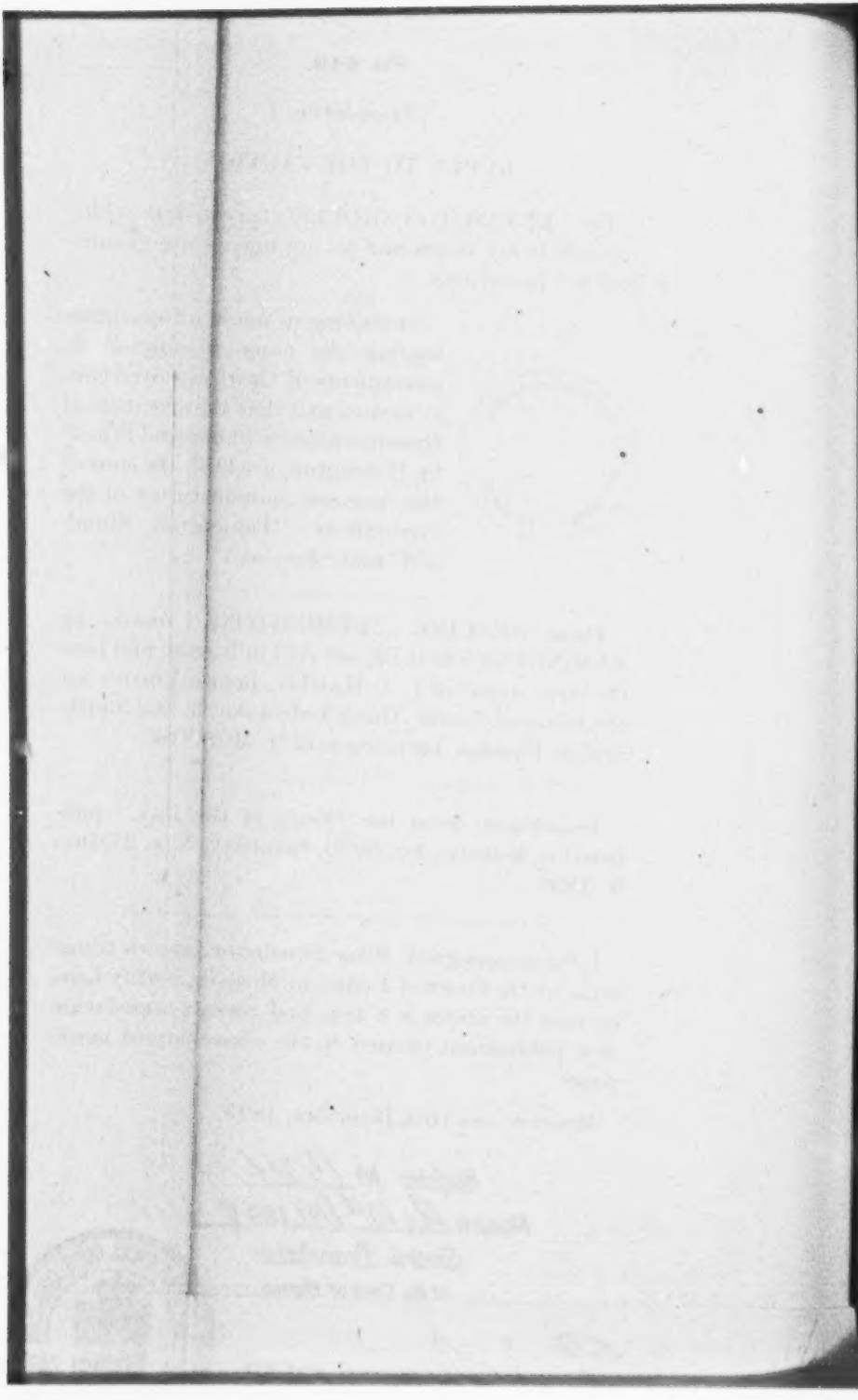
Translation from the "News of the Day," published in Moscow, No. 5930, Saturday, Nov. 27/Dec. 9, 1899.

---

I, the undersigned, Peter Skwarcow, sworn translator at the Court of Justice in Moscow, certify hereby that the above is a true and correct translation of a publication printed in the above-named newspaper.

Moscow, the 10th December, 1899.

Register № 1424
Moscow the 10th Dec. 1899
Sworn Translator
at the Court of Moscow



# ВОЗРАЖЕНІЕ на

## ПРЕДОСТЕРЕЖЕНІЕ.

Продаваемыя въ моихъ магазинахъ и моими агентами

*пишущія машины*

## „РЕМИНГТОНЪ-ШОЛЕСЪ"

**СУТЬ НАСТОЯЩІЯ, А НЕ ПОДДѢЛЬНЫЯ,**

**ПРЕВЫШАЮЩІЯ** въ достоинствѣ всѣ машины носящія названіе РЕМИНГТОНЪ вслѣдствіе усовершенствованія конструкціи, и что изобрѣтатели этихъ машинъ—С. Шолесъ и Франклинъ **РЕМИНГТОНЪ** оба сыновья умершихъ фабрикантовъ пишущихъ машинъ „Ремингтонъ-Стандардъ" или „Спеціаль".

Эти **ПАСТОЯЩІЯ „Ремингтонъ"** фабрики **Ремингтонъ-Шолесъ** продающіяся въ Россіи

*снабжены фирмой* **Т. И. Гагенъ**

**Представитель для всей Россіи.**

Большая Лубянка, 3. **МОСКВА.** Кузнецкій м., пас. Дмитровскій, 4.

No. 45.

Complainant's Exhibit.—Crescent Produce Co. Letter.

The Crescent Produce Co.,
WHOLESALE
BUTTER, EGGS AND POULTRY.
MAIN OFFICE Newton, Kans.

October 27 1900

Remington Typewriter Company,
Kansas City, Mo.,

Gentlemen,--

A representative for your machine called at our office yesterday; and we wish this morning to communicate with him immediately. As we have neither his name nor address, you may not be able to identify him, but if you can forward to him the enclosed letter, we shall deem it a great favor.

The gentleman referred to formerly represented the Hammond machine.

Yours truly,

THE CRESCENT PRODUCE CO

per S. M. C.

Complainant's Exhibit- Macomb Shorthand School Letter

Board
$1.60 to $3.00 per week . . .

All Students secure homes in private families.

# Macomb Shorthand School

MACOMB, ILLINOIS.

## Full Shorthand and Commercial Courses.

Shorthand, Bookkeeping, Penmanship, Letter Writing and Business Forms by Mail or by Personal Instruction at College.
Positions secured for all competent Stenographers and Bookkeepers finishing courses.
EXPENSES VERY LOW.
Address, L. P. MEYER, President

Successful Students from all parts of the UNITED STATES.

Macomb, Illinois, Nov. 8th. 190

Remington Typewriter Co.

Chicago, Ill.

Gentlemen:--

I have sent Miss Lizzie Davis to your office to secure a situation. I received a letter from her yesterday morning telling me of her experience in taking a test letter at your office; she said she could not read it back to you in the time given her but after going home she had no difficulty what-ever in reading it. I am sure her trouble was in being a little nervous on account of the new surroundings, for she has gone beyond the requirements of our tests many times in this school, and has done good work; I am sure she is capable and worthy and if you can give her a trial we will be gratified,

yours very truly

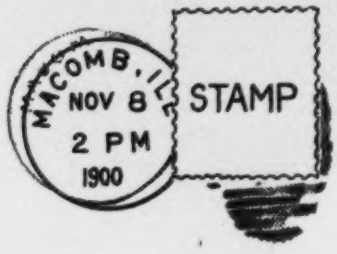
L. P. Meyer

No. 46B.

**Macomb Shorthand School**

MACOMB, ILLINOIS.

COURSE OF INSTRUCTION HIGH-GRADE
EXPENSES VERY LOW
COURSES BY MAIL OR AT COLLEGE
POSITIONS SECURED COMPETENT STUDENTS




Opened by mistake
Remington Typewriter Co

The Remington Type-writer Co.,

Chicago.

Madison St.

Ill.

Near Clark

38

No. 47A.

Complainant's Exhibit.—Mumaw Letter and Envelope.

**The Elkhart Normal School and Business Institute,**

**ELKHART, ELKHART COUNTY, INDIANA.**

**DEPARTMENTS.**

*Academic, Business, Stenographic, Pumanship, Elocution, and Physical Culture.*

**ADVANTAGES.**

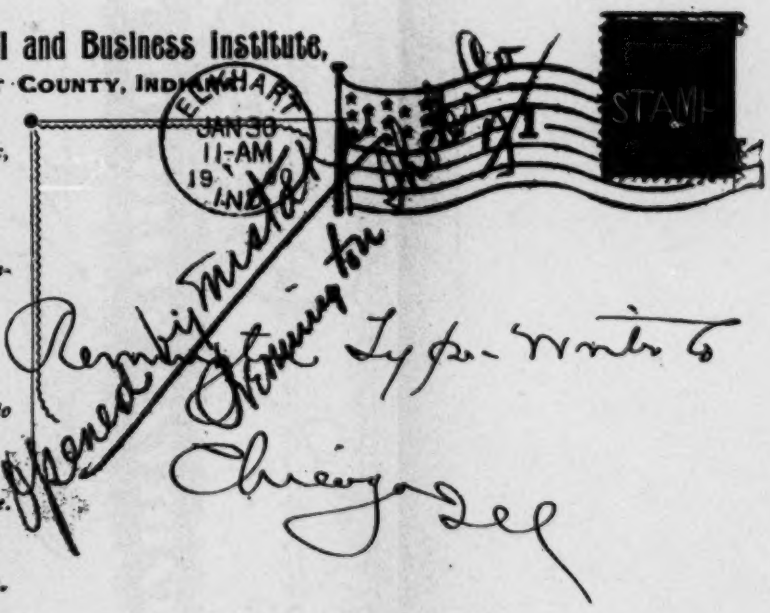
*Day and Evening Sessions. Reasonable Terms. Attractive Location. Thorough Instruction. Special Lectures.*

**CALENDAR.**

*Second Winter Term Jan. 15th to March 23d, 1900; Spring Term, March 26th to June 1st.*

*Students can enter at any time. Circulars free on application. Address the Secretary,*

**Dr. H. A. MUMAW, 411 Main St.**



No. 48.

Complainant's Exhibit.—Mumaw Letter and Envelope.

STAMP

Elkhart, Ind. 1/24 1900 No. 21

INDIANA NATIONAL BANK

OF ELKHART

Pay to Remington Jr. or order $46.00

Forty-Six and 00/100 Dollars

INDIANA NATIONAL BANK PAID FEB 3 1900 ELKHART, INDIANA

J. A. Mumaw

No. 49.

Complainant's Exhibit.—Mumaw Letter and Envelope.

Elkhart, Ind., Jan. 29th, 1900

RECEIVED
JAN 31 1900
ANSD
DICT'D BY

The Remington Typewriter Co.,

Chicago, Ill.

Gentlemen: Miss Gerttrude Pope, this city, one of our students, was suddenly called to Chicagothis P. M. on account of sickness of a relative, and it likely she will call on you in reference to a position as stenogra-rapher before she returns home. As far as I kno w the lady is competent, and I am sure she will attend to business, as she bears an excellent reputation.

Very respectfully yours,

Ira Mumaw

Complainant's Exhibit.—Mumaw Letter and Envelope.

Chicago
New York
Philadelphia
Pittsburg
Cincinnati
St. Louis
Minneapolis
San Francisco
Portland, Me.
Indianapolis
Grand Rapids
Milwaukee

C. N. FAY, PREST.
F. H. HEAD, V. PREST.

F. REMINGTON, GEN'L MGR.
J. V. PAULSEN, SEC'Y AND TREAS.

London
Paris
Berlin
Vienna
Hamburg
Copenhagen
Moscow
St. Petersburg
Bombay
Sydney
Auckland
Montreal

REMINGTO[illegible]OMPANY

REM-SHO

TYPEWRITER

CABLE CODES: A. B. C. 4TH EDITION.
DIRECTORY.
LIEBER'S STANDARD.
CABLE ADDRESS: "REM-SHO" CHICAGO.

MEMBERS OF THE NATIONAL ASSN.
OF MANUFACTURERS OF THE U. S.

Jan. 31, 1900.

Wyckoff, Seamans & Benedict,

C h i c a g o, Ill.

Dear Sirs:

We enclose a letter received today with our mail, which was opened by mistake.

Yours truly,

Remington-Sholes Company,

Aud.

Dict F
E F

Encl

Complainant's Exhibit.—Chester News Letter.

All the County News. All the City News.

# CHESTER NEWS

OFFICE OF THE
CHESTER NEWS PUBLISHING CO.

CROSBY M. BLACK, President.
~~THOMAS R. VERNON, Treasurer.~~
AUGUST DONATH, Editor and Manager.

MAR 17 1900

Chester, Pa., March 15, 1900

The Remmington Machine Co.

10 th and Chestnut Street

Philadelphia.

Gentlemen:

Will you kindly send a man to our officein Chester to-morrow ( Friday ) if possible to repair our machine. He hadbetter bring some tools with him as the machine needs some adjustment

Yours very truly,

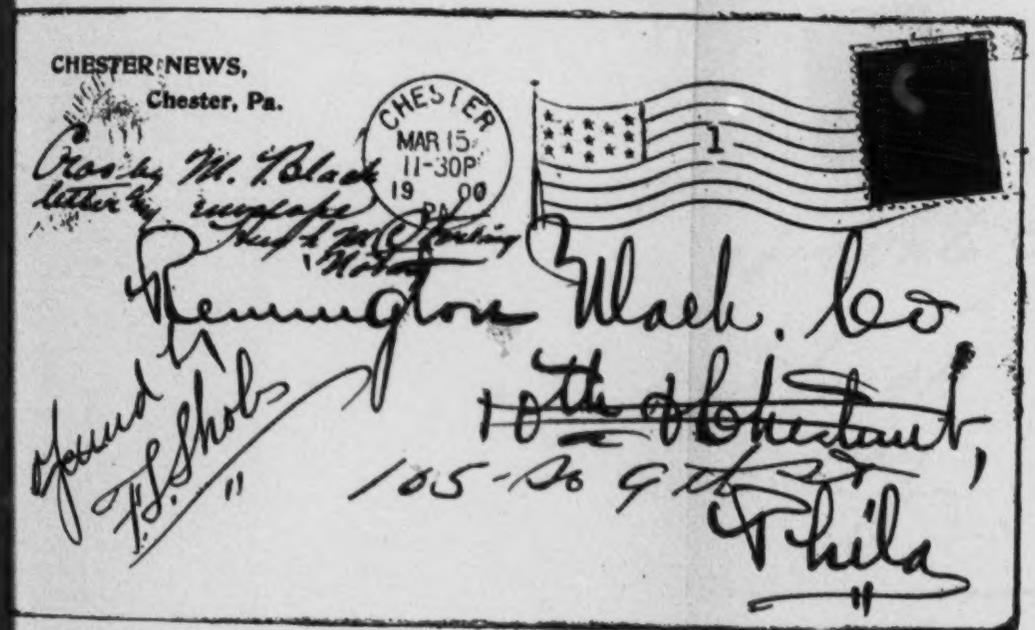
Crosby M Black
President

P.S.

Better also give him an Ad to place with us.

No. 52.

Complainant's Exhibit.—Chester News Envelope.



No. 53.

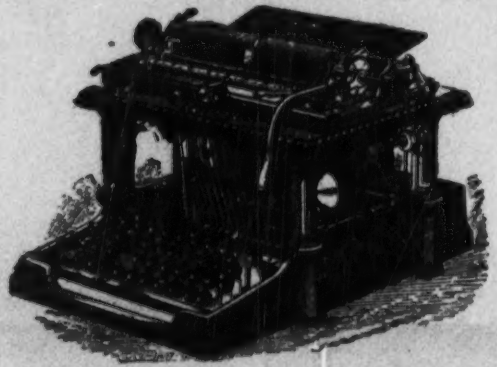
Complainant's Exhibit.—"La Machine à Écrire."

(Translation.)

Rem-Sho Typewriter, the only machine now manufactured by Mr. Remington, is sold exclusively at 37 rue Vivienne, near la Bourse, Paris.

To avoid any confusion in address,

Exposition of 1900, Class XI—Groupe 3, Palais des Lettres.



# MACHINE "REM-SHO"

la SEULE MACHINE actuellement fabriquée par M.

## REMINGTON

*se vend exclusivement*

**37, RUE VIVIENNE, près la Bourse, PARIS**

Téléphone 273-79 *Adr. Télég.* : Schönenberg-Paris

ÉVITER toute confusion d'adresse

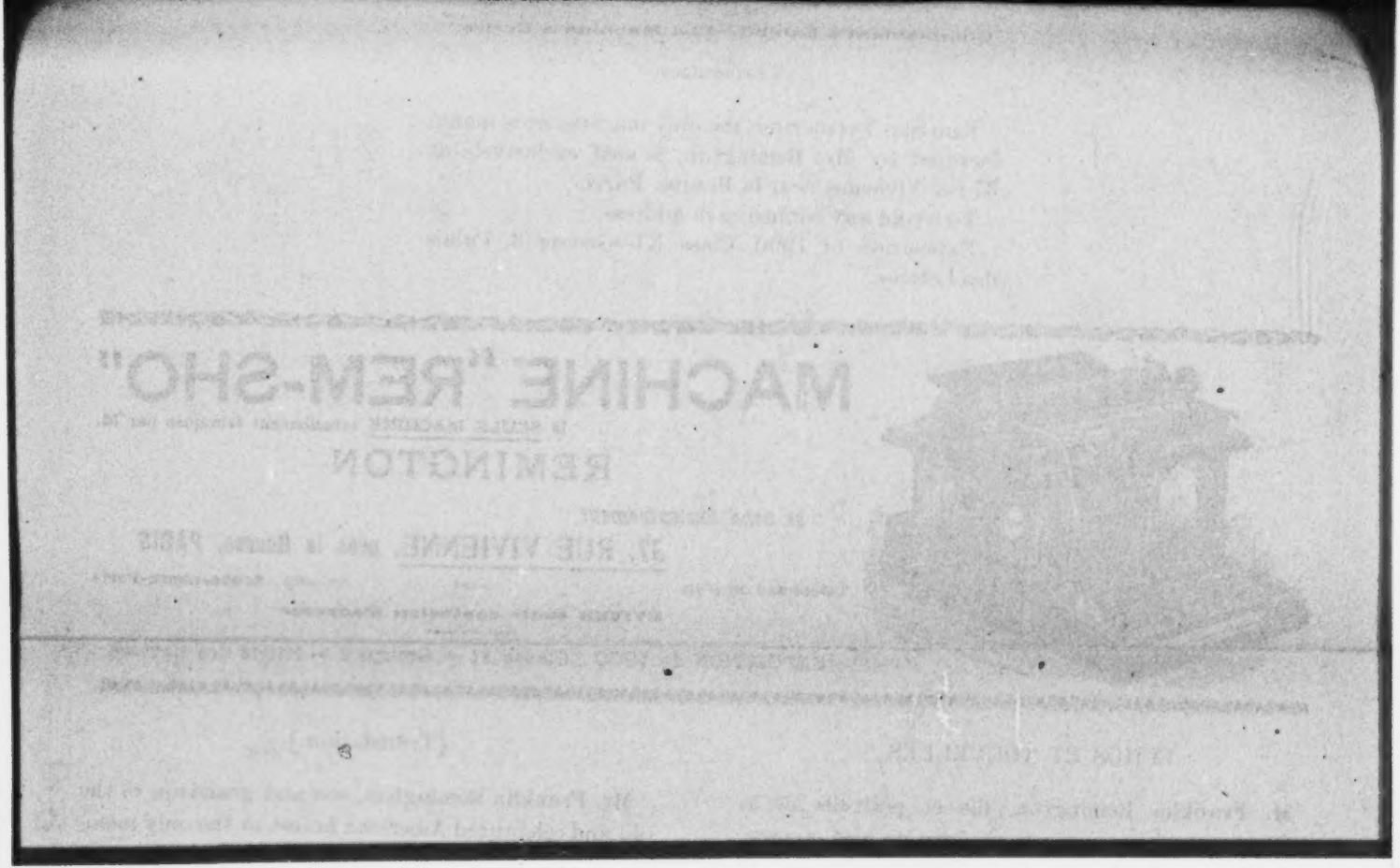
EXPOSITION de 1900 : Classe XI — Groupe 3 — Palais des Lettres

ECHOS ET NOUVELLES.

M. Franklin Remington, fils et petit-fils de la célèbre et ancienne maison américaine bien connue. C'st le seul membre de cette famille du reste qui s'occupe actuellement de construction de machines à écrire, et c'est à lui que nous devons la très appréciée machine à écrire REM-SHO.

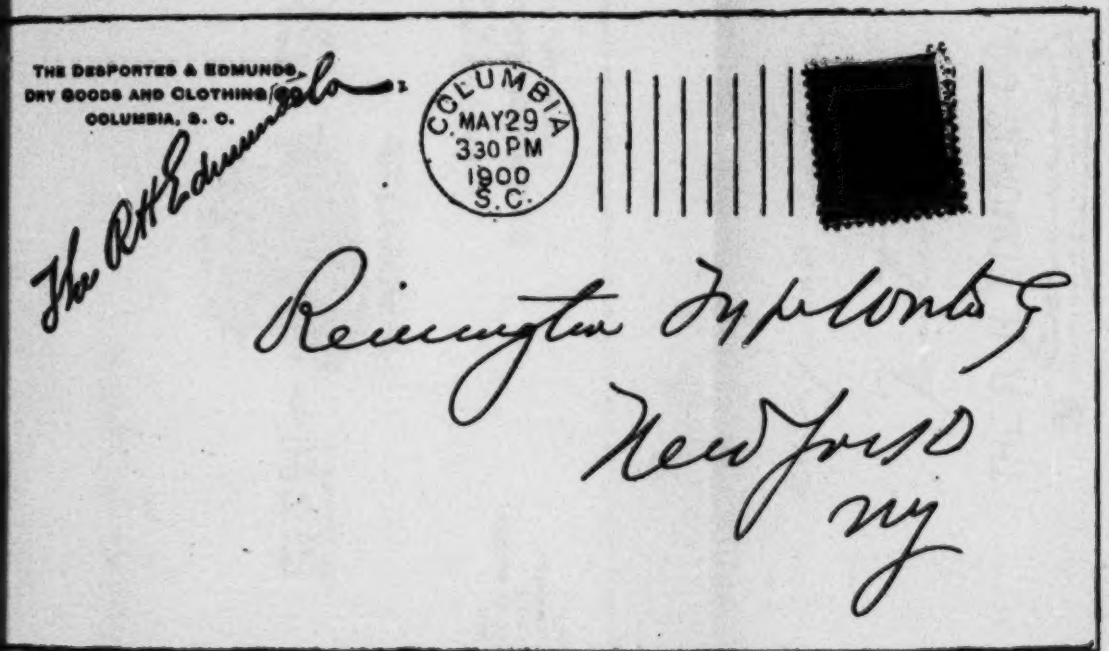
[Translation.]

Mr. Franklin Remington, son and grandson of the old and celebrated American house, is the only member of that family now engaged in the manufacture of typewriters, and it is to him we owe the greatly appreciated Rem-Sho typewriter.



No. 54.

Complainant's Exhibit.—R. H. Edmunds Rem-Sho Envelope.



Complainant's Exhibit.—R. H. Edmunds Co. Rem-Sho Booklet.

**WINNING POINTS**
OF THE

# REM-SHO
TYPEWRITER.

IT WILL PAY
PROSPECTIVE BUYERS
TO READ THIS
LITTLE PAMPHLET
CAREFULLY.

MANUFACTURED AND SOLD
BY THE
**REMINGTON-SHOLES COMPANY,**
CHICAGO, ILL., U. S. A.

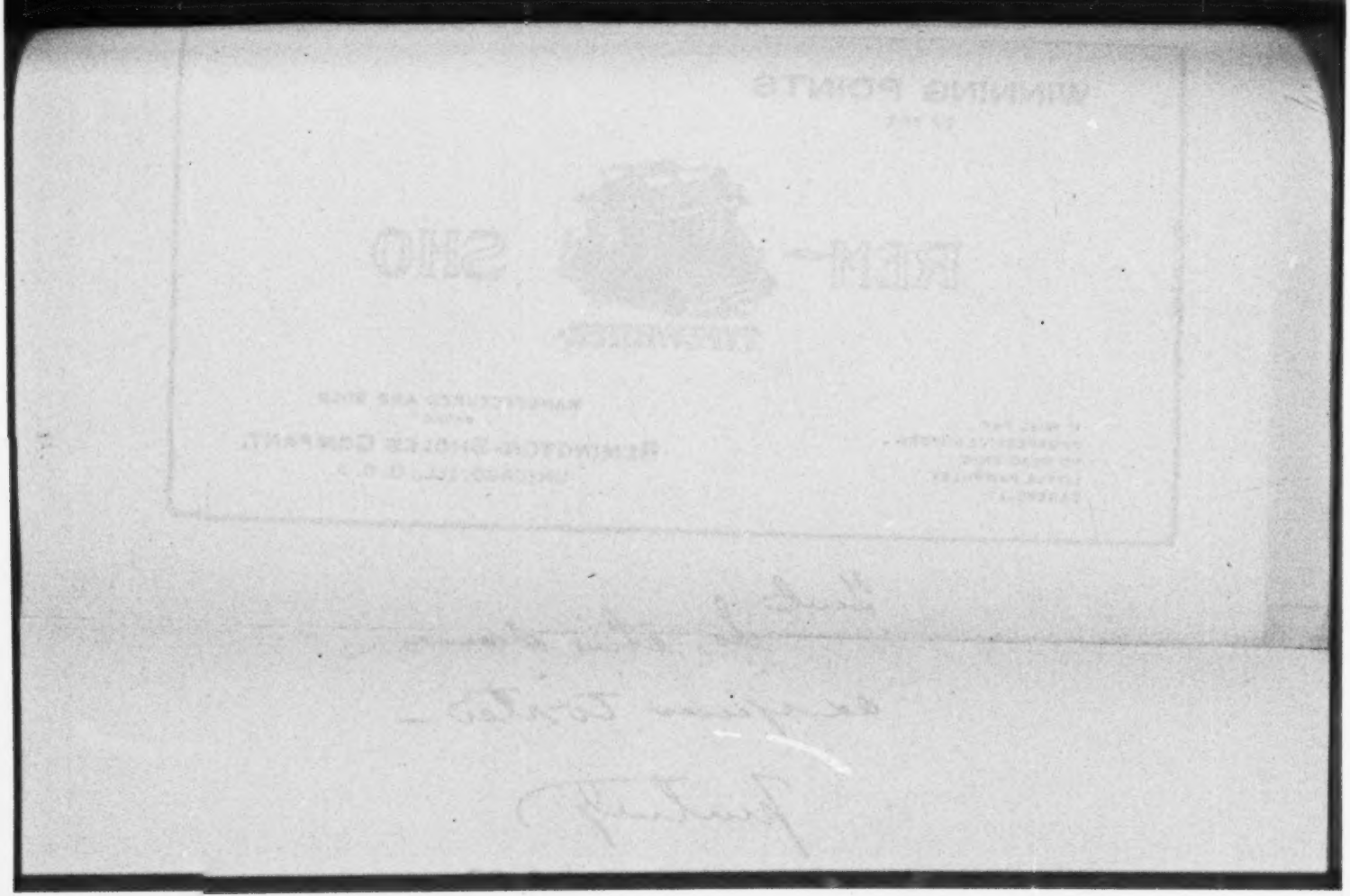
Gent
Is this same
as your writer—

Yours truly

THE R. H. EDMUNDS CO.,
By Edmunds

REMINGTON STANDARD TYPEWRITER
ADVERTISING
5/31/1900
DEPARTMENT
327 BROADWAY, NEW YORK.

20/1/18/00



No. 56.

Complainant's Exhibit.—Davis & Rose Letter.

E. G. DAVIS. G. A. ROSE.

# DAVIS & ROSE,

WHOLESALE AND RETAIL MERCHANTS.

HENDERSON, N. C., Sept 26 1900

The Remington Type Writer Co
Richmond Va
Gent.

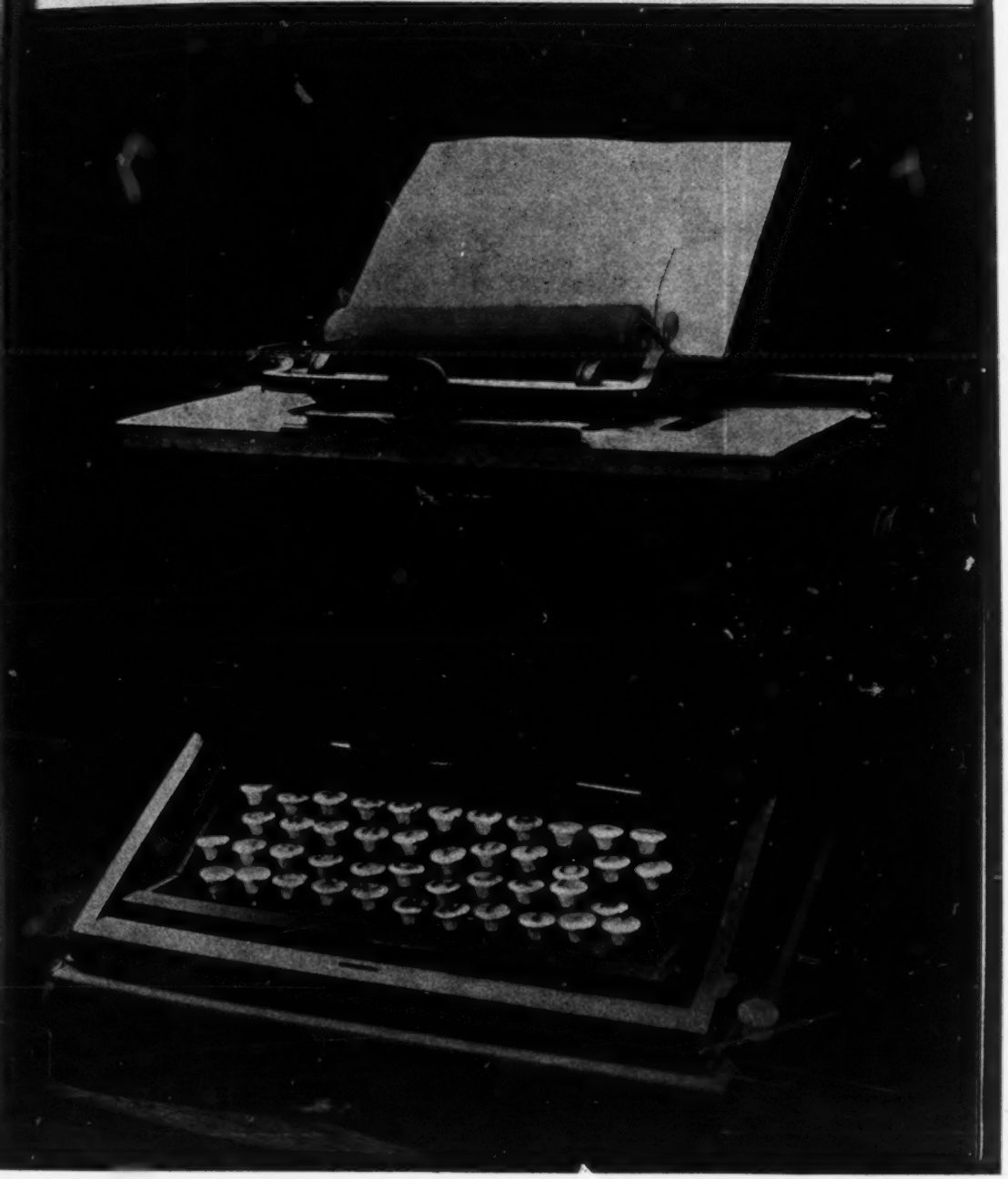
Send Catalogue of Remsho. Type Writer. If you do not make this machine please Turn this over to the proper branch, as we understand it is a part of your Plant

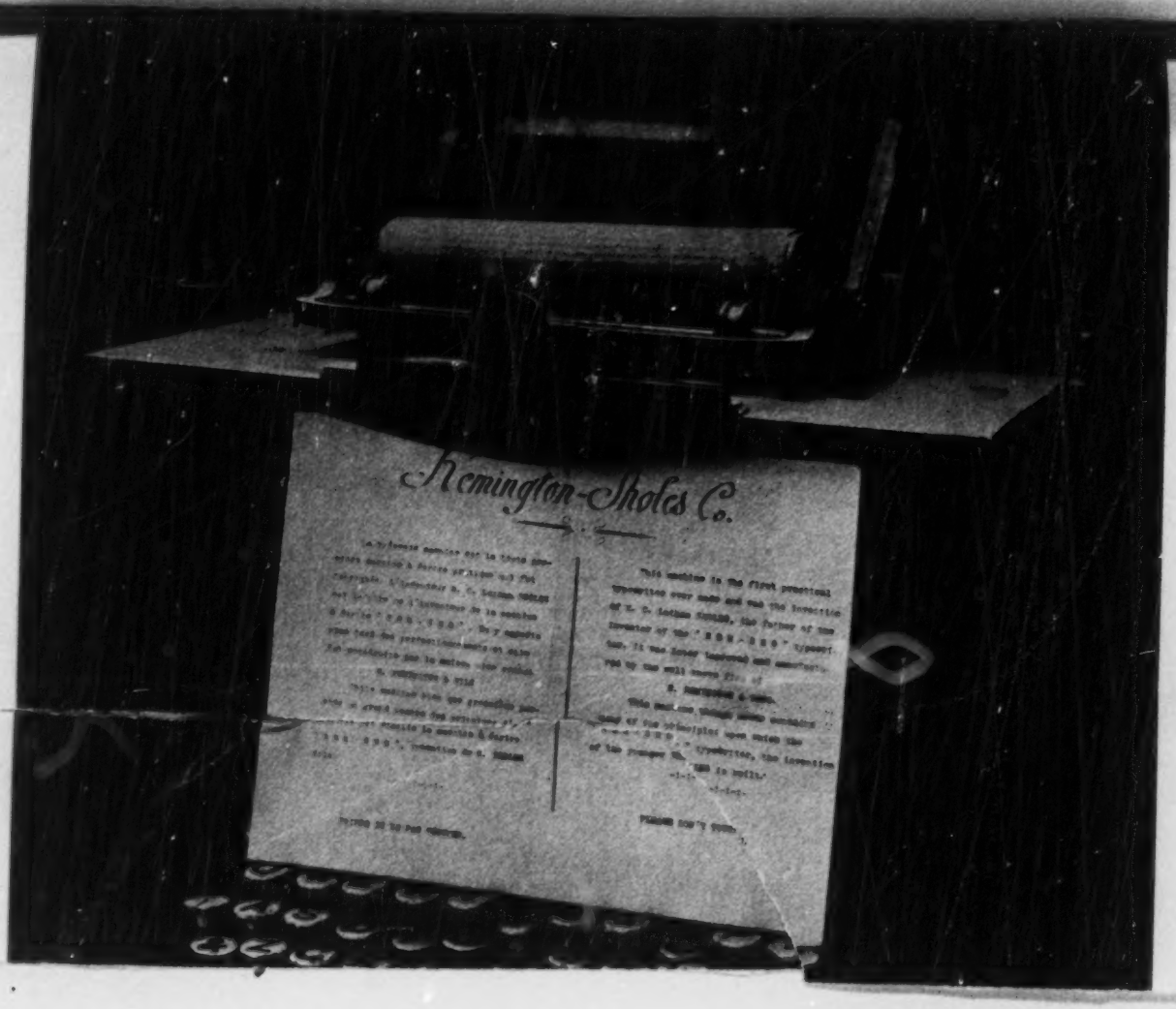
Truly
Davis & Rose

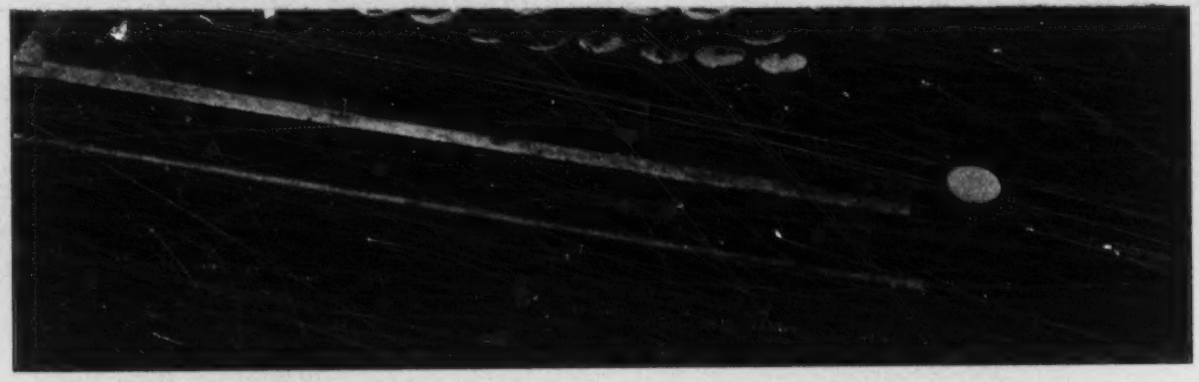
RECEIVED.
SEP 28 1900

No. 57.

Complainant's Exhibit.—Photograph No. 1. Remington-Sholes Retrospective Exhibit at Paris Exposition.




Remington-Sholes Co.



THE REMINGTON-SHOLES CO.

La présente machine est la toute première Machine à Ecrire pratique qui fut fabriquée L'inventeur M. C. Latham Sholes est le père de l'inventeur de la Machine à Ecrire "Rem-Sho." On y apporta plus tard des perfectionnements et elle fut construite par la maison bien connue:

E. REMINGTON & Fils.

Cette machine, bien que grossière, possède un grand nombre des principes d'après lesquels est établie la Machine à Ecrire "Rem-Sho," invention de M. Sholes fils.

Prière de ne pas toucher.

THE REMINGTON-SHOLES CO.

This machine is the first practical typewriter ever made and was the invention of M. C. Latham Sholes, the father of the inventor of the "Rem-Sho" typewriter. It was later improved and manufactured by the well-known firm of

E. REMINGTON & Sons.

This machine though crude contains many of the principles upon which the "Rem-Sho" typewriter, the invention of the younger Sholes, is built.

Please don't touch.

1002

1

# United States Circuit Court,

DISTRICT OF VERMONT.

---

WYCKOFF, SEAMANS & BENEDICT
vs.
THE HOWE SCALE COMPANY OF 1886.
} In Equity.

---

2

CHICAGO, May 8th, 1900.

Testimony taken in behalf of defendant in the above-entitled cause, before Marie L. Price, notary public and Special Examiner, by consent and under stipulation heretofore made, and pursuant to the 67th Rule as amended of the Supreme Court of the United States, in Equity.

Present: H. D. Donnelly, Esq., and Josiah McRoberts, Esq., for complainant; George P. Fisher, Jr., Esq., for defendant.

3

GEORGE A. BALDWIN, a witness of lawful age, being first duly cautioned and sworn and called on behalf of defendant, testified as follows:

Q. 1. Please state your name, age, residence and occupation.

A. My name is George A. Baldwin; my age is thirty-three; my home is at La Grange, Illinois, and my occupation is organizer for the Remington-Sholes Company.

Q. 2. How long have you been in the employ of the Remington-Sholes Company?

A. Since January 1st, 1898.

4 Q. 3. State the character of your duties since you have been with the Remington-Sholes Company.

A. That of organizing the business throughout the United States; that is, along the typewriter line; also visiting the various agencies about the country and pertaining to the duties of a person in such employment.

Q. 4. Has it been any part of your duty as organizer to negotiate contracts with local dealers throughout the United States, or any part thereof?

A. Yes, sir, that has been a large part of my duties.

Q. 5. By whom were you employed before you entered the service of the Remington-Sholes Company?

5 A. For two months before that I was with the Borden & Selleck Company, who were agents for the Howe scales in this immediate locality; I mean for the territory about Chicago.

Q. 6. And by whom were you employed before you entered the service of Borden & Selleck?

A. By Wyckoff, Seamans & Benedict.

Q. 7. What was the character of your duties while you were in the employ of Borden & Selleck?

A. That of organizing the business—the typewriter business—for the Remington-Sholes Company in the 6 sale of the Remington-Sholes typewriter.

Q. 8. What was the nature of your duties while you were in the employ of Wyckoff, Seamans & Benedict?

A. I was salesman, selling typewriters, for three years in the City of Minneapolis and for four years, or about that time, throughout Illinois and Indiana, under the Chicago office.

Q. 9. I call your attention to "Complainant's Exhibit Instructions to Agents by the Howe Scale Company," and ask you to state whether you have ever received a copy of said instructions, and, if so, when?

A. Yes, sir, I have seen these. I think I received a

copy of these instructions some time during '98, the latter part, I think. 7

Q. 10. I call your attention to a typewritten instrument entitled "Facts to Bear in Mind," and ask you to state whether you have ever seen such instrument before, or a copy of it?

A. Yes, sir, I have seen this, and have received a copy of it.

Q. 11. From whom did you receive such copy, and for what purpose was it given you?

A. I received a copy from the Remington-Sholes Company about the middle of '99, as near as I can remember. They were used for the purpose of giving 8 instructions to the salesmen as regards the points on the Remington-Sholes machine.

Q. 12. And I assume that the "Complainant's Exhibit Instructions to Agents by the Howe Scale Company" was used for that purpose, was it not?

A. Yes, sir; it was.

Q. 13. State, if you know, which of these two letters of instruction has been used since the one entitled "Facts to Bear in Mind" was issued by the Remington-Sholes Company.

A. The one used last is the one not marked as an exhibit. The other one has never been used since the 9 later one has been issued.

The instrument referred to in Q. 10 is offered in evidence by counsel for defendant, and the same is marked "Defendant's Exhibit Remington-Sholes Company Instructions to Dealers."

Said exhibit is objected by complainant's counsel as immaterial and irrelevant.

Q. 14. State in what way these instructions have been used since you have been connected with the Remington-Sholes Company; I mean both "Complainant's

10 Exhibit Instructions to Agents by the Howe Scale Company" and "Defendant's Exhibit Remington-Sholes Company Instructions to Dealers."

A. They have been sent to the dealers when requested to be used as a source of training for their salesmen for the sale of the Remington-Sholes machines.

Q. 15. Have you ever received any other written instructions, or have you ever given out any other written instructions than the two exhibits that have been shown you?

A. No, sir; I never have received any or given any out.

11 Q. 16. Have you ever received any oral instructions or directions from the Howe Scale Company or Borden & Selleck or from the Remington-Sholes Company in regard to the use of the name "Remington-Sholes" in connection with the sales of the Remington-Sholes typewriter?

Same objection.

A. I do not think the matter has been approached other than to call my attention to what is written in the back of the catalogue regarding the name. I mean the Rem-Sho catalogue.

12 Q. 17. What instructions—I mean oral instructions—have you given to salesmen or dealers in Rem-Sho machines relative to the use of the name Remington-Sholes, if you have given any such instructions?

Same objection.

A. Many times the matter has never been approached. It has been my custom when the question of name has come up to either refer them to the back page of the Rem-Sho catalogue, or sometimes I have offered an oral explanation of the matter myself.

Q. 18. What has been the character of the oral explanation given by you? 13

Same objection as last.

A. My explanation has invariably been that the Rem-Sho machine was being manufactured by the Remington-Sholes Company of Chicago; that Mr. Frank Remington was the general manager of this company; that he is a son of one of the Remingtons of the old firm of the Remington Arms & Cartridge Company; that Mr. Zalmon Sholes was a son of the original inventor of the Remington typewriter; that these two sons brought out the Remington-Sholes machine, and that this 14 company has no connection, and never did have any connection, with the Remington concern above mentioned.

Q. 19. I call your attention to "Complainant's Exhibit Rem-Sho Booklet," also to "Complainant's Exhibit Rem-Sho Catalogue," also "Complainant's Exhibit Remington-Sholes Company's Catalogue, Sept. 16, 1898." Please state whether you have ever seen catalogues like these, and if so, under what circumstances?

A. Yes, sir; I have seen catalogues like each of these. "Complainant's Exhibit Rem-Sho Catalogue" I have seen in the office of Page, Dennis & Company, of New York City; "Complainant's Exhibit Remington- 15 Sholes Company Catalogue, Sept. 16, 1898" I have seen in the various offices of the Howe Scale Company throughout the United States, and "Complainant's ExhibitRem-Sho Booklet" I have seen in the factories of the Remington-Sholes Company and in the hands of their various dealers throughout the country.

Q. 20. These catalogues are samples of the different editions of the catalogue issued by the Remington-Sholes Company with respect to its numbers 2 and 3 machines, are they not?

A. Yes, sir; there were a number of different edi-

16 tions gotten out; just how many I could not say, but these represent the different editions.

Q. 21. How long were catalogues with respect to the Nos. 2 and 3 machines issued by the Remington-Sholes Company?

A. I think up to about March, '99.

Q. 22. What kind of catalogue, if any, was issued by the Remington-Sholes Company after it ceased to issue the catalogue with respect to the Nos. 2 and 3 machines?

A. They issued a No. 4 and No. 5 catalogue after that.

17 Q. 23. Can you produce a sample of the No. 4 and No. 5 catalogue?

A. Yes, sir; I always carry one in my pocket. Here it is.

The catalogue produced by the witness is offered in evidence, and the same is marked "Defendant's Exhibit Rem-Sho Catalogue, Nos. 4 and 5."

Q. 24. What instructions, either oral or in writing, if any, have you had from the Howe Scale Company, or from Borden & Selleck, or from the Remington-Sholes Company, with respect to the distribution of the cata-

18 logues relating to the No. 2 and No. 3 Rem-Sho machines, or with respect to the distribution of the catalogues of the Nos. 4 and 5 machines, and what instructions have you given dealers or salesmen with respect to the distribution of the Remington-Sholes catalogues?

Same objection as last.

A. I never have had any written instructions, and have never given any written instructions with regard to the distribution of catalogues. My oral instructions have been to leave catalogues with any one interested in the purchase of a typewriter, and I have given such instructions to salesmen and dealers.

Q. 25. State, if you know, to what extent these various catalogues that have been shown you of the Rem-Sho machines have been used throughout the United States, and state in what manner they have been used. 19

A. I can simply state that the catalogues which have been shown me have been sent extensively through the mails to prospective buyers, and have been distributed very freely by the various dealers throughout the country.

Q. 26. State, if you know, what is the practice or custom of the various branch offices or dealers in the Rem-Sho machines with respect to the exhibition of the Rem-Sho catalogues and their distribution. 20

Same objection as last.

A. The catalogues have always been placed on the top of a table or desk where they were easily accessible in each office I have visited. As regards their distribution, the salesmen have always had access to them, and generally carry them in their pockets.

Q. 27. And how long has this been the custom or practice of the branch offices or dealers, so far as you know?

Same objection as last.

A. It has been the custom always during my connection with the company. 21

Q. 28. State, if you know, what has been the character of the signs referring to the Rem-Sho typewriter and displayed at the branch office of the Remington-Sholes Company and at the stores of dealers in Rem-Sho typewriters.

Same objection; question is improper, because it calls for secondary evidence and hearsay.

A. The Remington-Sholes Company have adopted a uniform sign of uniform wording, which has been ad-

22 hered to in each of their own offices, and about a year ago brought out a blue metal sign with the same uniform wording upon it, which has been sent to each of the dealers in the United States. In the early part of '98 a pasteboard sign was brought out, which was also sent to each dealer, and which was generally framed and placed either in the window or in a conspicuous place in the office.

Q. 29. I call your attention to a pasteboard sign of the Rem-Sho typewriter, and ask you to state whether you have ever seen the same or a sign like it before, and if so, where and under what circumstances?

23 A. Yes, sir; I have seen exactly similar signs to the one exhibited, both at the factory of the Remington-Sholes Company and also in the branch offices and dealers' offices of the Rem-Sho machine.

Q. 30. State, if you know, how extensively such sign has been used?

A. Up to six months ago, probably, the paper sign referred to had been sent to every branch office in the United States, and in each of the offices I have visited I have seen the signs exhibited, sometimes tacked upon the wall and at other times framed and hanging upon the

24 wall or displayed in the window.

Q. 31. State, if you know, when this sign was first distributed by the Remington-Sholes Company and was used at branch offices and dealers in the manner you have described.

A. In the early part of '98 was the first time the sign was sent out.

The sign referred to by the witness in his last two preceding questions is offered in evidence and marked "Defendant's Exhibit Rem-Sho Pasteboard Sign."

Complainant's counsel objects to the exhibit of-

fered in evidence, upon the grounds that it is irrele- 25
vant and immaterial.

Q. 32. I call your attention to a circular letter signed by the Remington-Sholes Company, and ask you to state whether you have ever seen a letter like this before.

A. Yes, sir; I have seen this letter.

Q. 33. State what you know about this circular letter.

A. This letter was sent to the various dealers about the country by the Remington-Sholes Company.

The letter referred to in the last answer is of- 26
fered in evidence and marked "Defendant's Exhibit Remington-Sholes Sign Circular Letter."

Q. 34. State whether you have ever seen signs like the blue and white sign illustrated upon said Exhibit Circular, and if so, where and when?

A. Yes, sir; I have seen these signs a great many times during my travels through the country, at the offices of the various dealers, which signs are exhibited upon the outside of the offices, either above or below the window. All the offices have these signs.

Q. 35. State, if you know, whether the Remington-Sholes Company has adopted any uniform style of letter 27
heading for its branch offices.

A. Yes, sir; they have adopted a uniform letter-head, which is being used at all of its branch offices.

Q. 36. I show you "Defendant's Exhibit Remington-Sholes Co. Letter-Heading, Pittsburgh Office," and ask you to state whether or not that letter heading is that used at the branch offices of the Remington-Sholes Company.

A. Yes, sir; the letter-head referred to is the general letter-head adopted by the Remington-Sholes Company

28 and used by them both in their general and branch offices.

Q. 37. You may state, if you know, how long this style of letter heading has been used at the branch offices of the Remington-Sholes Company.

A. The style of letter-head referred to has been used as long as my connection with the company has continued.

Q. 38. State, if you know, whether the Remington-Sholes Company has furnished any uniform style of business card for its branch offices throughout the country, and, if so, for how long a period?

29 A. Yes, sir; a uniform syle of business card was issued by the Remington-Sholes Company, and such cards have been used throughout my employment by the Remington-Sholes Company.

Q. 39. I call your attention to "Defendant's Exhibit Remington-Sholes Company Business Card," and ask you to state how such card compares with the business cards furnished by the Remington-Sholes Company to its branch offices throughout the United States?

A. The card referred to is like the cards used and adopted as the uniform card of the Remington-Sholes

30 Company throughout its offices in the United States.

Q. 40. State, if you know, how the machines manufactured by the Remington-Sholes Company are commonly known or designated in the typewriter trade and by the general public?

Question objected to as incompetent, improper, because it has not been shown that the witness is qualified to testify on the subject inquired about; also as immaterial and irrelevant.

A. The machines manufactured by the Remington-Sholes Company is known throughout the territory in which I have traveled as the Rem-Sho typewriter.

Q. 41. How long has the machine been commonly known or designated as the Rem-Sho typewriter in the territory in which you have traveled? 31

Same objection as last.

A. The machine has been known as "The Rem-Sho Typewriter," to my personal knowledge, ever since October, '97.

Q. 42. You may state whether there has been any change in the design of the frame of the Rem-Sho machine since you entered the employ of the Remington-Sholes Company.

Question is objected to on the ground that it calls for secondary evidence, and not the best evidence. 32

A. The frame of the machine has never been changed since my connection with the house of the Remington-Sholes Company.

Q. 43. I call your attention to an advertising blotter, and ask you to state whether you have ever seen the same before, and if so, where and when?

A. Yes, sir; I have seen the blotter referred to very frequently, both at the factory and in the branch offices of the Remington-Sholes Company; also in the offices of their dealers throughout the United States. 33

Q. 44. State for how long a period you have seen such blotters at the places mentioned by you in your last answer.

A. I could not state positively, but probably a year and a half.

The blotter referred to by the witness is offered in evidence and marked "Defendant's Exhibit Rem-Sho Blotter No. 1."

Complainant's counsel objects to the introduction of the said blotter as immaterial.

34 Q. 45. I call your attention to another blotter, and ask you to state whether you have ever seen blotters like this before, and if so, when and where?

A. Yes, sir; I have seen the blotter referred to at the factory of the Remington-Sholes Company within the last three weeks. I have not seen them at any other place as yet. I have been in the far South for four months, and do not know whether this blotter has been circulated or not.

The blotter last referred to is offered in evidence and the same is marked "Defendant's Exhibit Rem-Sho Blotter No. 2."

35

Same objection as last.

Q. 46. I call your attention to a memorandum of agreement, purporting to have been made the 24th day of March, 1899, by and between the Remington-Sholes Company and the Diamond Supply Company, of St. Jo., Missouri, and ask you to state what, if anything, you know concerning the making of such agreement.

A. The contract referred to was drawn up by myself and duly signed by the Diamond Supply Company in my presence at the time mentioned in the contract.

Q. 47. State whether you are familiar with the sig-
36 nature of Mr. C. N. Fay, and if so, whether that is his signature at the end of the Diamond Supply Company contract?

A. Yes, sir; I am familiar with the signature of Mr. C. N. Fay, and the signature appearing upon the contract of the Diamond Supply Company is that of Mr. Fay, which was signed in my presence, as I brought the contract in with me upon my return from the trip.

Q. 48. State whether there exists any other agreement, oral or in writing, between the Remington-Sholes Company and the Diamond Supply Company than the contract just identified by you?

A. No, sir; there does not exist any other agree-

ment, to my knowledge, and if there was I would know it, having charge of that part of the business. 37

The memorandum of agreement referred to by the witness is offered in evidence, and the same is marked "Defendant's Exhibit Diamond Supply Co. Contract."

Complainant's counsel consents that a correct copy of said contract may be substituted for the original contract, and may be used in this case with the same force and effect as the original.

Q. 49. Was there any contract or agreement, oral or written, between the Remington-Sholes Company and the Diamond Supply Company in respect to the advertisements that might be issued by said Diamond Supply Company? 38

A. There was no agreemnt, either written or oral, in regard to any advertisement that might appear by the Diamond Supply Company. It was understood that they do their own advertising, and that they pay for the same. This was the case with all like contracts.

Q. 50. Was there any agreement, oral or written, whereby the advertisements that might be published by the Diamond Supply Company should be subject to the approval or control of the Remington-Sholes Company? 39

Question objected to as immaterial and irrelevant.

A. The Remington-Sholes Company had nothing to do with the advertising done by the Diamond Supply Company. They advertised the Rem-Sho typewriter on their own responsibility alone.

Q. 51. Was there ever any agreement or contract between the Diamond Supply Company and the Howe Scale Company relative to Rem-Sho typewriter?

Same objection as last.

A. No, sir; there was not.

40 Q. 52. Did you ever hear of the Remington Standard Typewriter—I mean the typewriter manufactured by Messrs. Wyckoff, Seamans & Benedict—being called a "Rem."

Question is objected to as immaterial, irrelevant and incompetent, as the question calls simply for negative evidence.

A. No, sir; I never did, although I sold the machines for several years.

Q. 53. State, if you know, what is the commonly accepted meaning of the word "standard," at the present
41 time, when such word is applied in connection with typewriters.

Question is objected to by complainant's counsel as improper, because the witness has not been shown qualified to give an opinion on the subject inquired about, nor would such evidence be competent or material or relevant if he were.

A. The commonly accepted meaning of the word "standard" among typewriter salesmen, and also among typewriter users throughout the country, is any machine of $100 value of a standard make. If a man asks for a standard typewriter, he invariably means any machine
42 of a hundred dollar quality. The machines coming under this head, commonly considered, would be the Smith-Premier, Densmore, the Yost, Caligraph, the Remington, the Rem-Sho and others.

Q. 54. Did you ever meet a typewriter salesman named Andrew J. Scorer?

A. Yes, sir; I met Mr. Scorer in Pittsburgh, in exactly the same way that I would meet any other salesman that was selling the Rem-Sho typewriter.

Q. 55. State when you met Mr. Scorer in Pittsburgh, and what was the occasion of your meeting with him?

A. I met Mr. Scorer, I think, upon my third trip to

Pittsburgh, when the business of the Remington-Sholes 43
Company was taken over from the Howe Scale Company. I was introduced to him, and had but a few moments conversation with him, and did not see him again for two or three days, and then but for a moment.

Q. 56. Was Mr. Scorer at that time a salesman for the Rem-Sho typewriter?

A. When I arrived in Pittsburgh he was a salesman for the Howe Scale Company, selling the Rem-Sho typewriter. After the business was taken over by the Rem-Sho Company, he was then a salesman in the employ of the Remington-Sholes Company.

Q. 57. State what instructions, if any, you gave 44
Mr. Scorer in regard to selling the Rem-Sho typewriter.

A. My instructions to Mr. Scorer were very limited and brief. I talked to him the same as I talk with any salesman as regards the pushing of the business and selling the Rem-Sho machine. I told Mr. Scorer to sell the machine strictly upon its merits; that the machine was good enough to so sell, and that we did not wish any misrepresentations or deception in any manner. My conversation was not very long, as I had other matters of importance to attend to. He then went out, and I did not see him for several days, as stated.

Q. 58. Mr. Scorer, in the course of his deposition 45
given on behalf of complainant, has stated in answer to Q. 18, as follows:

> "In talking to a Mr. Baldwin in regard to the Remington-Sholes, his instructions were to tell anything that was necessary to get a foothold."

And again, in his answer to Q. 24, he says:

> "I asked Mr. Baldwin, and he told me that my business was to go out and sell typewriters and tell anything that was necessary to sell them."

Please state whether these statements of Mr. Scorer's are true in fact or not.

46 A. I will state that the statements made are not true in any particular; that I never made any such a remark to Mr. Scorer, and never gave him any such instructions. It is not my way of doing business, and I have never used such argument to any one.

Complainant's counsel objects to the answer of the witness, because it is not responsive to the question, and the answer volunteers statements not called for, and is argumentative.

Q. 59. State how the typewriting machines manufactured by the Remington-Sholes Company have been
47 marked since you have been familiar with the said machines.

A. The Nos. 2 and 3 models were marked with a plate across the front of the machine, back of the key board, which read, "Remington-Sholes Company. Mfrs. Chicago." The Nos. 4 and 5 models have the same plate upon them, and in addition the paper table has the name "Rem-Sho" with the model No. 4 or No. 5 c through the same.

Q. 60. I call your attention to a name-plate, and ask you to state how it compares with the name-plates that have been used upon the Rem-Sho machine since you
48 entered the employ of the Remington-Sholes Company.

A. The name-plate submitted is a *fac simile* of the one which has been used upon the Rem-Sho machine since my connection with the company.

The name-plate shown witness is offered in evidence, and the same is marked "Defendant's Exhibit Remington-Sholes Company Name-Plate."

*Cross-Examination by Mr. Donnelly.*

X-Q. 61. When did you enter the service of Wyckoff, Seamans & Benedict, the complainants in this case?

A. I think it was some time about 1890-91. I won't be positive about the time.

X-Q. 62. When did you leave their service? 49

A. In October, '97.

X-Q. 63. And went immediately from their service into that of the Remington-Sholes Company; is such the fact?

A. I went with the Borden & Selleck Company first.

X-Q. 64. And how long did you continue in the service of Borden & Selleck, and what were their relations, if any, with the Howe Scale Company of 1886?

A. I was with the Borden & Selleck Company about two months and a half. They were agents for the Howe Scale Company of 1886 for the territory tributary to Chicago. 50

X-Q. 65. What did Borden & Selleck sell other than the Remington-Sholes typewriter?

A. Their principal business was selling scales. They handled a great many things as accessories to that.

X-Q. 66. Scales manufactured by the Howe Scale Company?

A. Yes, sir.

X-Q. 67. After you left the employ of Borden & Selleck you entered the service of the Remington-Sholes Company, and you have continued in its service ever since? That is the fact? 51

A. Yes, sir.

X-Q. 68. Before you entered the service of Wyckoff, Seamans & Benedict, what experience, if any, had you had in the sale of typewriting machines or the manufacture thereof?

A. I had no experience in the manufacture of typewriters, but I was with the Northwestern Typewriter Company, of Minneapolis, for a year or two before that time.

X-Q. 69. What machine, if any, did the Northwestern Typewriter Company manufacture and sell?

52 A. They did not manufacture any machine. They were Northwestern agents for the Caligraph typewriter.

X-Q. 70. By "Caligraph typewriter," I presume you refer to the typewriting machine which has been for many years manufactured by the American Writing Machine Company; is that correct?

A. It is.

X-Q. 71. Was your first experience in the sale of typewriting machines obtained in the sale of the Caligraph for the Northwestern Company?

A. Yes, sir, it was.

53 X-Q. 72. How long have you had knowledge of and been familiar with the so-called Remington typewriter?

A. Since my advent into the typewriter business.

X-Q. 73. And at how early a period would you say?

A. Probably since '89; I could not say exactly, however.

X-Q. 74. Was the so-called Remington typewriter upon the market and largely in use, to your knowledge, prior to 1894?

A. Yes, sir.

X-Q. 75. And has it continued to be so largely sold

54 and used since that date?

A. Oh, yes, sir, no doubt about that.

X-Q. 76. When did you first learn of the Remington-Sholes so-called typewriter, or know that there was such a machine on the market?

A. I think it was in '96 some time, as near as I can judge.

X-Q. 77. And prior to that time, had you known or heard of any typewriter machine being manufactured or sold in connection with which the name "Remington" had been used or was used, other than that manufactured and sold by Wyckoff, Seamans & Benedict?

A. I don't know that I ever had.

X-Q. 78. Prior to the time when you first obtained knowledge of the so-called "Remington-Sholes" typewriter, had you ever known of any machine on the market, I mean typewriting machine, under the designation or name of "Sholes"? 55

A. I don't recollect that I ever did.

X-Q. 79. When you sold the so-called Remington typewriter, in what territory did you canvass for sales and make sales of said machines?

A. In the City of Minneapolis, in the State of Minnesota, the northern part of Illinois, Southern Wisconsin and Northern Indiana.

X-Q. 80. Was the so-called "Remington" machine introduced and used in that territory which was canvassed by you, and, if so, to what extent? 56

A. It varied according to the territory. In some places the Remington was very strong; in other places this was not true, some other machine had the lead.

X-Q. 81. In what territory was it strong?

A. I don't think, Mr. Donnelly, it was so much as regards territory as regards towns or cities. The Remington always stood well in Minneapolis; I never did any work in Chicago proper; at Elkhart, Indiana, the Smith-Premier machine was very strong; at South Bend, Indiana, the case was about equally divided; 57 Kankakee was always a Remington town largely; Danville, Illinois, was a Smith-Premier town until I got through with it it was a Remington; Champaign, Illinois, was always a hot Smith-Premier town; Pontiac, Illinois, was made a Remington town, I guess, through my efforts. The territory just mentioned, embracing Eastern Illinois and Northern Indiana, was the field I traveled most extensively. Off and on I traveled Northern Illinois and Southern Wisconsin.

X-Q. 82. Since you have been in the employ of the

58 Remington-Sholes Company, have you established any agencies or dealerships for the company in the territory canvassed and traveled over by you when you were in the employ of Wyckoff, Seamans & Benedict selling the so-called Remington typewriters?

A. The only agency I have established in that territory has been at Minneapolis—that is, personally. That was our own office. I have established no dealerships in the territory mentioned.

X-Q. 83. How much time have you devoted to the Minneapolis office in introducing the Remington-Sholes typewriter?

59 A. Personally, I have done no work in Minneapolis, as regards the selling of the machine. My work there has been auditing the accounts, talking with the salesmen and putting a little vim into them now and then. I have not been in Minneapolis for a long time, my efforts being directed elsewhere.

X-Q. 84. To what extent has the Remington-Sholes Company established agencies or dealerships in the territory formerly canvassed by you for Wyckoff, Seamans & Benedict, and to what extent is the so-called Rem-Sho machine sold in said territory?

60 Defendant's counsel objects to the question as immaterial and incompetent.

A. I am unable to answer the question, Mr. Donnelly, for the reason that my efforts have been confined to a territory farther from home, and the immediate territory mentioned is under the control of our Chicago manager, Mr. Hobbs.

X-Q. 85. Then, if I understand your last answer, you mean to say that the territory formerly canvassed by you for Wyckoff, Seamans & Benedict has been canvassed and looked after by Mr. Hobbs, the Chicago manager of the Remington-Sholes Company?

A. Yes, sir; that is right.

X-Q. 86. In what particular territory have you devoted your time and attention to the promotion of the sales of the so-called Rem-Sho typewriter? 61

A. My principal work has been in the South, although previous to a year and a half ago I covered nearly everything in the United States, in the large centers.

X-Q. 87. What do you mean by covering "nearly everything in the large centers"?

A. I mean such cities as New York, Philadelphia, Pittsburgh, Cincinnati, St. Louis, Kansas City, Minneapolis, etc.

X-Q. 88. In what portion of the South have you spent your energies in an effort to introduce the Rem-Sho typewriter? 62

A. Everything south of the Ohio River and south of the State of Kansas, and south of Southern Missouri, from the Atlantic Ocean to the Territory of New Mexico.

X-Q. 89. Was this new territory, or was the Rem-Sho typewriter used in that territory before you began to canvass it?

A. There had been a few No. 1 machines sold in New Orleans and Nashville under the old company, but there had been no work done down there with the No. 2 machine, or with the No. 4, excepting, I believe, that one of our men made one trip down the Atlantic Coast. 63

X-Q. 90. What do you mean in your last answer by "No. 1" machine and "the old company"?

A. I mean the first model Remington-Sholes typewriter, then so called, and the Remington-Sholes type writer Company, which existed before my time, as a company.

X-Q. 91. In your canvass of this Southern territory referred to by you in previous answers, did you or not find any so-called Remington typewriters in that terri-

64 tory? If so, mention some of the territories where you found such machines.

A. I guess you could find them pretty much everywhere.

X-Q. 92. In which ones of the larger cities in the South did you establish agencies or dealerships for the so-called Remington-Sholes or Rem-Sho typewriter?

A. Richmond, Virginia; Atlanta, Georgia; Birmingham, Alabama; Dallas, Texas; Ft. Smith, Arkansas; Springfield, Mo.; and Parkersburg, West Virginia. I have mentioned the principal ones.

X-Q. 93. State, if you know, to what extent the so-
65 called Rem-Sho typewriter has been sold in said territory up to the present time.

The question is objected to as not proper cross-examination, as immaterial and irrelevant.

A. I am unable to give you the figures in regard to the case, although we have done a very nice business in the South.

X-Q. 94. I notice in your testimony that you have referred some times to agencies of the Remington-Sholes Company and some times to dealers or dealerships and branch offices. Kindly explain what you mean by those
66 terms.

A. A branch office is our home office under direct control of the Remington-Sholes Company. A dealer is a man to whom we sell machines outright, he paying for them himself and handling his own business. An agent, I suppose, is a man who simply acts as a correspondent, we billing machines direct to the customer.

X-Q. 95. Well, then, as I understand you, all branch offices are under the control and direction of the Remington-Sholes Company. Is that correct?

A. As far as my branch offices go, it is true. I don't know anything about the foreign business.

X-Q. 96. But you know it is true as regards what you have called branch offices of the Remington-Sholes Company within the United States? 67

A. As I understand the words "branch offices," it is.

X-Q. 97. Do you understand as a fact that all of the so-called branch offices of the Remington-Sholes Company within the United States are under its direction and control?

The question is objected to as incompetent and improper, in that it does not indicate to the witness which offices are referred to.

A. I don't see how I can answer the question, the way you have put it, Mr. Donnelly, for the reason that we have very few branch offices in this country to-day. 68

X-Q. 98. The Remington-Sholes Company has issued certain catalogues advertising its machine, in which catalogues are named certain branch offices in the United States. Now, I ask you if it is true, as a fact, that the offices so stated as branch offices in the United States are such as a matter of fact?

A. I am not in a position to speak during the last year and a half, outside of my immediate territory, which is south of the Ohio River. I have done no work north of that, and I cannot tell you how the thing is done or how it stands. 69

X-Q. 99. Will you please state in what cities or towns in the United States the Remington-Sholes Company has branch offices, or in which it had branch offices, when you were last informed or had knowledge on that subject?

A. The last time I was through the field, which was prior to one year and a half ago, there were branch offices at New York City, Philadelphia, Pittsburg, Cincinnati, St. Louis, Minneapolis and Chicago. These places I visited and checked them up.

70 X-Q. 100. In what southern towns or cities did you establish branch offices for the Remington-Sholes Company?

A. I never established any branch offices that I remember of myself.

X-Q. 101. Did you establish any agencies in southern territory?

A. No, sir.

X-Q. 102. Did you establish dealerships?

A. I did.

X-Q. 103. Did you establish any dealership in the State of Florida, and, if so, where?

71 A. I never established any there, no, sir.

X-Q. 104. Has the Remington-Sholes Company any dealer in Florida?

A. No, sir, none at the present time.

X-Q. 105. Has it had any, and, if so, kindly name the person or persons?

A. I cannot say what was done there before I was in that field. That state is controlled by the dealerships in other cities at the present time.

X-Q. 106. Do you know whether a man by the name of Carcaba had ever acted as a dealer or agent for the

72 Howe Scale Company or the Remington-Sholes Company in the State of Florida?

A. To my personal knowledge, I cannot tell you. He might have acted under Page, Dennis & Company; I don't know.

X-Q. 107. Did you appoint for and on behalf of the Remington-Sholes Company any dealer at Austin, Texas?

A. I did, yes, sir.

X-Q. 108. Please state what his name is.

A. When the dealership was active, the name of the man that I established was Fred. Petmecky.

X-Q. 109. When was Mr. Petmecky appointed dealer for the Remington-Sholes Company, and for how long a period of time did he act as such? 73

Counsel for defendant objects to the question, and without repetition the same objection is made to all similar questions, as immaterial, irrelevant and not proper cross-examination.

A. I cannot give you the date without referring to the contract. The dealership ceased to us when the State of Texas was turned over to the state dealer, which was something over a year ago, I think.

X-Q. 110. Did you aid or assist Mr. Petmecky in exhibiting a Remington-Sholes typewriter at Mr. Petmecky's establishment? 74

A. I might have done so.

X-Q. 111. I find in the Austin Daily Tribune of March 11, 1899, being Austin, Texas, a reference to the fact that a Remington-Sholes machine was on exhibition at Petmecky's. Did you take part in that exhibition or have any connection with it?

A. I don't know the date I was there. I have done that a good many times, but whether this refers to me or not I don't know.

X-Q. 112. Did Petmecky have a Remington-Sholes machine at about that time or was he about that time acting as a dealer for the Remington-Sholes Company? 75

A. I think Mr. Petmecky had a Remington-Sholes machine then and was acting as a dealer for the Remington-Sholes Company.

X-Q. 113. And Petmecky then lived and acted as a dealer at Austin, Texas; is such the fact?

A. I think he did.

X-Q. 114. Did you impart any information to Petmecky concerning the origin of the Remington-Sholes machine, and as to who were the inventors, etc.?

76 A. As to that I could not say. We had a general talk about the machine. I always carry catalogues and left some with Mr. Petmecky at that time.

X-Q. 115. When you first visited Petmecky had he then a Rem-Sho typewriter, so-called, or did you have one with you and exhibit it to him?

A. I always carry a machine with me as a sample and when I was first in Austin, of course Mr. Petmecky. The next I was there he had several.

X-Q. 116. Did you ever deliver a catalogue of the Rem-Sho typewriter at your first interview with him?

77 A. Yes, sir; I did.

X-Q. 117. Will you please look at the catalogue which I show you, marked for identification "Rem-Sho Booklet," and say whether or not the catalogue you delivered to Petmecky was likes said exhibit?

A. I could not say whether it was this edition or not. It was a No. 2 and 3 catalogue.

X-Q. 118. I notice in said Exhibit Catalogue this statement: "The only machine now made by a Remington," and I notice in an advertisement or notice of the Remington-Sholes machine at Petmecky's that the same statement is made as in the catalogue. What now do

78 you say as to whether or not you probably delivered a catalogue to Petmecky like "Complainant's Exhibit Rem-Sho Booklet"?

A. I have already said that I delivered a catalogue, but did not know whether it was that edition or not.

X-Q. 119. Do you know whether, at the time of your visit, there were newspapers published at Austin, Texas, under the names and designations of the Austin Daily Tribune and the Austin Daily Statesman?

A. I did not know it at that time. I was a stranger in the town.

X-Q. 120. Have you learned that fact since?

A. I have seen the signs of those newspapers since 79
that time. I have read the daily papers of Austin, but I don't remember whether they were these papers or not. I probably have. Yes, I think I sent a Tribune home to my wife. I was there during the flood.

And thereupon the taking of testimony is adjourned until Wednesday, May 9th, 1900, at 10 o'clock A. M.

Wednesday, May 9th, 1900, 10 o'clock A. M. Met pursuant to adjournment. Present as before.

Cross-examination of witness Baldwin resumed.

X-Q. 121. Did you or not ever see any advertise- 80
ments of Mr. Petmecky in the Austin papers?

A. No, sir; I never saw any advertisement of any kind that Mr. Petmecky put in any paper.

X-Q. 122. Did you ever aid or assist Mr. Petmecky in the preparation of any advertisement, or make any suggestion in relation to the contents thereof?

A. I do not remember whether I ever did or not.

X-Q. 123. Does the Remington-Sholes Company advertise its machines in newspapers or magazines or other publications, aside from its catalogues, etc.?

A. They have done some advertising in newspapers 81
and magazines.

X-Q. 124. What newspapers and magazines, and when has the Remington-Sholes Company advertised its typewriting machines?

A. I do not know. The advertising is not a part of my duties.

X-Q. 125. Have you ever seen any advertisements in newspapers prepared or inserted by agents or dealers of the Remington-Sholes Company?

A. Yes, sir; I think I have.

X-Q. 126. State the names of such dealers and the

82 names of newspapers in which you saw an advertisement of the Remington-Sholes or "Rem-Sho" typewriter.

A. I do not recall any at the present time. I have seen these ads. now and then, but have never kept a copy of them, and they have passed from my mind.

X-Q. 127. Have you ever aided or assisted any of the dealers of the Remington-Sholes Company in the preparation of their advertisements, or made any suggestion with relation thereto?

A. Yes, sir; I think I have made some suggestions along that line, but I cannot recall ever having prepared an ad.

83 X-Q. 128. Did you make any suggestions as to the substance of the advertisements to be inserted in the newspapers by the dealer or agent?

A. Only as to general points of the machine—points of superiority and merit.

X-Q. 129. Anything else?

A. No, sir.

X-Q. 130. Does the Remington-Sholes, or has the Remington-Sholes Company ever supervised or looked after the advertisements of its dealers or agents for the purpose of seeing or noting the contents thereof?

84 A. No, sir; they never have. I presume that ads. have been sent to them after being inserted, as a matter of reference.

X-Q. 131. Does the Remington-Sholes, or has the Remington-Sholes Company ever furnished its dealers or agents with electros or plates for the purpose of printing cuts of its machine?

A. Yes, sir; they have furnished electros of the machine and copper plates of the Rem-Sho typewriter to those who have asked for them or desired them.

X-Q. 132. And these electros and plates have also contained the name "Remington" as a part of the corporate name, have they not?

A. No, sir, no plate has ever been furnished, to my knowledge, having anything upon it but the name "Rem-Sho. Typewriter" underneath, exactly as it appears upon the Remington-Sholes Company's letter-heads and cards. These plates are made in one piece. 85

X-Q. 133. Is it not a fact that in all advertisements of the Remington-Sholes machine, or what you call the "Rem-Sho" machine, the name "Remington-Sholes Company" always appears?

A. I think it does, yes, sir.

X-Q. 134. Is it not the purpose and intent of the Remington-Sholes Company to have its corporate name appear in connection with all cuts and advertisements of its machine? 86

A. I have never been so informed, and have never thought of the matter in that light.

X-Q. 135. But that is its practice, is it not?

A. I think the company use the name "Remington-Sholes Company" upon their letter-heads and cards and signs to designate the name of the manufacturer of the machine, the same as any other concern does along the same lines.

All that part of the witness' answer beginning "the same as any other concern," etc., is objected to by counsel for complainant as volunteered and not called for by the question, and the witness is admonished by counsel to answer his questions and not to volunteer things which are not called for by the question. 87

X-Q. 136. Does the name "Remington" always appear upon all machines manufactured by the Remington-Sholes Company?

A. In connection with the name "Remington-Sholes Company" it does.

X-Q. 137. Then, as a matter of fact, the Remington-

87 Sholes Company always associates or uses the name "Remington" upon and in connection with its machine, does it not?

A. I do not know how to answer your question. If you will let me explain I will answer it. In speaking of the machine, it is always called the "Rem-Sho" typewriter. Yes and no.

X-Q. 138. Did you ever see one of its machines that did not have the name "Remington" upon it?

A. To my knowledge, their machines have always had the name "Remington-Sholes Company" upon the name-plate.

89 X-Q. 139. And it is also true that the name "Remington" always appears upon all its signs and in its catalogues and circulars and advertisements? Is not that so?

A. The name "Remington-Sholes Company" does appear upon all its letter-heads, cards and signs, as far as I know.

X-Q. 140. I show you an advertisement of the Remington-Sholes machine, designated "Complainant's Exhibit St. Augustine Daily Herald, No. 2," and ask you if it is an advertisement of the Remington-Sholes ma-

90 chine and to say whether or no you have ever seen said advertisement or one like it?

A. No, sir, I do not remember of ever seeing this ad. before or one like it.

X-Q. 141. Please examine the cut which accompanies said ad., and say whether or not it was printed from a plate or electro such as is prepared and furnished by the Remington-Sholes Company to its agents or dealers, or such as it has prepared or furnished hitherto, to your knowledge?

A. Yes, sir, it looks like a cut of the No. 2 Rem-Sho, and a cut of the long carriage which the Reming-

ton-Sholes Company have been in the habit of furnishing to its dealers and agents upon application. 91

X-Q. 142. Please examine said advertisement and say whether or not you find the abbreviated and hyphenated words "Rem-Sho" in said advertisement?

A. No, sir, I do not see it there.

X-Q. 143. I call your attention to "Complainant's Exhibit St. Joseph Sunday Herald, April 30, 1899," and ask you if you have ever seen an advertisement of the Rem-Sho or Remington-Sho typewriter therein?

A. No, sir, I never saw this ad. before.

X-Q. 144. Does said ad. purport to be inserted by the Diamond Supply Company, of 319-321 North 3rd street, St. Joseph, Mo., and is that the same concern which you appointed dealer for the Remington-Sholes Company and with which you made a contract on behalf of the Remington-Sholes Company, which has hitherto been put in evidence in this case? 92

A. The name is the same. I do not know their street address, although I know their location.

X-Q. 145. Have you any doubt that the advertisement of the so-called "Rem-Sho" machine, which purports to be inserted by the Diamond Supply Company, is the same concern which you selected as dealer for and on behalf of the Remington-Sholes Company, as testified by you in your direct evidence in this case? 93

A. As I have said, Mr. Donnelly, I have never seen the ad. before, but I presume that they put it in there.

X-Q. 146. Do you know whether or not the Remington-Sholes Company furnished the Diamond Supply Company with an electro or plate from which the cut of the machine in said ad. was printed?

A. I generally order an electro sent, but cannot remember just what was done in this case.

X-Q. 147. Please examine said cut in said adver-

94 tisement, and say whether or not, in your opinion, the same was printed from an electro or plate furnished by the Remington-Sholes Company, at your instance or suggestion or otherwise.

A. It looks like one of our cuts, Mr. Donnelly. It is one of our cuts.

X-Q. 148. Do you find in this advertisement of the so-called Rem-Sho machine in "Complainant's Exhibit St. Joseph Sunday Herald, April 30, 1899," the name "Remington-Sholes" printed directly underneath the abbreviated name "Rem-Sho"?

A. Yes, sir; I see it there.

95 X-Q. 149. Do you find in the advertisement of the Remington-Sholes machine, in the exhibit last referred to, the word "standard"?

A. I see the word "standard;" yes, sir.

X-Q. 150. Do you also find the word "standard" in the advertisement of the Remington-Sholes standard typewriter, in "Complainant's Exhibit St. Augustine Daily Herald No. 2"?

A. Yes, sir; I see the word "standard" there.

X-Q. 151. I understand you to have stated in substance in your direct testimony that the word "standard"

96 always refers to any machine of $100 value, of a standard make, and that the word "standard" would be equally applicable to the Smith-Premier, Densmore, Yost, Caligraph, Remington, Rem-Sho and other machines. Is that your testimony?

A. Yes, sir; it is.

X-Q. 125. Is it your testimony then that the word "standard," when used in connection with any typewriting machine, or in an advertisement of any typewriting machine, does not indicate its origin or indicate that of any particular maker?

A. Do you mean in the abstract sense?

X-Q. 153. I mean what my question calls for, and 97
ask you to answer it?

A. Yes, sir; that is what I mean.

X-Q. 154. Referring to "Complainant's Exhibit St. Augustine Daily Herald No. 2," and "Complainant's Exhibit St. Joseph Sunday Herald, April 30, 1899," is it your testimony that the advertisements therein of the Remington-Sholes machine as the "Remington-Sholes Standard Typewriter" is a proper designation of the Remington-Sholes or Rem-Sho typewriter?

The question is objected to as immaterial, irrelevant, not proper cross-examination, and as calling 98
for the opinion of the witness.

A. I would not say that it was, and have never seen it in that connection before.

X-Q. 155. Will you say that it was not and is not a proper designation of the Rem-Sho typewriter?

Same objection.

A. I would not put it that way in an ad. myself.

X-Q. 156. Why?

Same objection.

A. Because that is not the name of the Remington-Sholes typewriter, although the Remington-Sholes type- 99
writer is a standard machine.

X-Q. 157. Please tell me why you would not use the word "standard" in an advertisement of the Remington-Sholes typewriter.

Same objection.

A. Well, sir, because that is not the name of the Rem-Sho typewriter, and because it might be construed as a misrepresentation, which I never practice.

X-Q. 158. Any other reason?

A. None that I think of.

100 X-Q. 159. Why might the word "standard," as it appears in the advertisements of the Rem-Sho machine, so called, just referred to, be construed as a misrepresentation?

A. Because that word "standard" has been used in connection with the Remington machine, and I have always avoided any misrepresentation in the selling of the Rem-Sho typewriter, and have always distinctly told every one with whom I have talked that we have no connection with them in any way, shape or manner.

X-Q. 160. I presume that by the words "Remington Machine," referred to in your last answer, you mean
101 the machine manufactured and sold by Wyckoff, Seamans & Benedict; is that correct?

A. Yes, sir, it is.

X-Q. 161. Do you know whether it is the practice or custom of the Remington-Sholes Company to furnish its foreign dealers or agents or branch offices with electros or plates from which cuts of its machine are to be printed in newspapers or other foreign publications?

The question is objected to as immaterial, irrelevant and not proper cross-examination, no foundation for the matter inquired of having been laid in
102 the witness' direct examination; and the question is further objected to as misleading and improper, in that it assumes that the Remington-Sholes Company has foreign agents; and it is further objected to as it has not appeared that this witness is qualified to answer the question, even if the question were a proper one.

A. This matter was in the hands of Mr. Paulsen, since deceased, and I know nothing about the matter, other than I have had some cuts sent to some of my dealers.

X-Q. 162. Do you know whether a concern in the

City of Chicago, known as the "Franklin Company" or 108
the "Franklin Engraving Company," has made the electros or plates intended to exhibit or illustrate the Remington-Sholes typewriter or "Rem-Sho" typewriter, so-called?

A. Only by seeing their name on the cuts.

X-Q. 163. Is it a fact that there is such a concern in the City of Chicago engaged in such business?

A. I could not swear to it. I guess they are here. I see the name "Chicago" on their cuts, but I never saw the firm and don't know where they are.

X-Q. 164. I call your attention now to an advertise- 104
ment of the so-called Remington-Sholes or Rem-Sho machine in "Complainant's Exhibit Rem-Sho Advertisement in Export Edition of Scientific American," which appears on page XVIII of said publication. Kindly look at said advertisement and say whether or no you have ever before seen an advertisement in said publication or in any other like that shown to you.

A. No, sir, I never saw this ad. before and never saw any other like it.

X-Q. 165. Have you ever seen in any of the prints or publications of the Remington-Sholes Company the statement which I here find in said advertisement, to wit, 105
"The only typewriter manufactured to-day by a Remington. Strong, reliable, and accurate, it represents the second generation of typewriter manufacturers bearing this great name"?

A. No, sir, I never saw that statement before

X-Q. 166. Did you ever before see any part of said statement in any of the catalogues or printed publications or advertisements of the Rem-Sho typewriter or the Remington-Sholes Company?

A. Yes, sir, I have seen a portion of it in one edition of the Remington-Sholes Company's catalogue, but do not remember having seen it anywhere else.

106 X-Q. 167. What portion of said quotation from said advertisement have you seen in the catalogues of the Remington-Sholes Company?

A. That portion, "The only machine now made by a Remington."

X-Q. 168. Have you ever made that statement yourself in your work of organizing the Remington-Sholes Company's business and instructing dealers and agents in their duties, and in connection with the explanation of the origin of the Remington-Sholes machine?

A. Yes, sir, I have made that statement.

X-Q. 169. And made that statement frequently to
107 agents and dealers?

A. I am unable to say how frequently; not always, but I have made it.

X-Q. 170. How came you to make that statement?

A. I saw it in the catalogue, and supposed I was at liberty to talk what was printed.

X-Q. 171. And you did talk it because you saw it in the catalogue; is that correct?

A. I did talk it because I saw it in the catalogue and because I believed it was true.

X-Q. 172. Are the Rem-Sho machines manufac-
108 tured by a Remington?

A. I do not know how I can answer it. A Remington is a member of the firm, and I have always believed that I was justified in making that statement.

X-Q. 173. And you believed that and made that statement because you saw it in the catalogue of the Remington-Sholes Company, and considered that you were told or authorized to make it; is that correct?

A. I was never told to make any statement whatever about the machine. I used my own judgment about that, and have stated always what I conscientiously believed to be true, and nothing else.

X-Q. 174. Will you now kindly answer my last question, leaving out your conscientious scruples? 109

Question read to witness.

A. Yes, sir.

X-Q. 175. Please examine "Complainant's Exhibit Rem-Sho Booklet," and say, if you know, when said catalogue was printed and first publicly circulated?

A. I don't know, Mr. Donnelly. I am really unable to give you the information. I think I first saw it about the middle of '98, I should think.

X-Q. 176. When was the catalogue, "Defendant's Exhibit Rem-Sho Catalogue Nos. 4 and 5," first published and circulated by the Remington-Sholes Company? 110

A. I first saw this catalogue about March, 1899.

X-Q. 177. Do you know whether the Remington-Sholes Company has an agent or dealer by the name of McGurrin, and, if so, how long has he been connected with the Remington-Sholes Company?

Defendant's counsel objects to the question as not proper cross-examination, and protests against prolonging the examination of this witness by this and like questions for which no foundation exists in the examination in chief. 111

A. All I know about this matter is that there was a contract made with a concern called Bender, Brewer & McGurrin, about January 1st, 1900.

X-Q. 178. Were you ever connected with the New York office of the Remington-Sholes Company, or the office of Page, Dennis & Company, in New York City, and, if so, when, and what was the character of your business connection or association with said office?

A. I visited New York City for the Remington-Sholes Company during the latter part of 1898, for the purpose of auditing the accounts and making some

112 changes in the office staff. I never had any connection with Page, Dennis & Company.

X-Q. 179. Who, if any one, was in charge of the New York office at the time of your visit or visits?

A. During my first visit the manager was Mr. W. De Sausseur Trenholn, and during my second visit the office was in charge of Mr. Harry I. Seddon.

X-Q. 180. About when was your second visit to New York, when you say Seddon was in charge of the New York office?

A. I think it was about the latter part of October.

X-Q. 181. What year?

113

A. '98, if I remember correctly.

X-Q. 182. State how long, or about how long, Seddon remained in charge of the New York office of the Remington-Sholes Company.

A. I am unable to give you the time, because Mr. Remington attended to that matter thereafter.

X-Q. 183. I understand it to be your testimony that prior to September, 1899, "Complainant's Exhibit Instructions to Agents by the Howe Scale Company" was furnished to all dealers, agents and branch offices of the Howe Scale Company or the Remington-Sholes Company; is that your testimony?

114

A. I would not state that they were furnished to all. The instructions were never printed, simply being typewritten, and were furnished now and then to the salesmen of our branch offices through our managers, and to our dealers.

X-Q. 184. Is it or not a fact that "Defendant's Exhibit Remington-Sholes Instructions to Dealers" was first issued and sent to dealers, agents and branch offices about September, 1899, and that since that time such instructions have been furnished to the agents, dealers and branch offices of the Remington-Sholes Company?

A. I do not know. That matter is in the hands of

Mr. Fierlein. When I was in the office and during the holidays of 1899 I think that was shown to me, but I have never called for any of them personally that I can remember of. I was on the road a number of months prior to that and was not at the office. 115

X-Q. 185. In answer to direct question 16, wherein you were asked in substance whether you had ever received any instructions from your employers in regard to the use of the name Remington-Sholes in connection with the sales of the Remington-Sholes typewriter, you state in substance that your attention was called to what is written in the back of the catalogue of the Remington-Sholes Company regarding the name. Please state when your attention was so called and by whom and for what reason? 116

A. I think Mr. Fay called my attention to the matter, in my interview with him when I was about to go with the Borden & Selleck Company, in a general talk about the machine, and I was referred to the catalogue in the matter. I am unable to recall the conversation, which was not along that line principally, but that of working up the business.

X-Q. 186. Why did Mr. Fay call your attention particularly to that portion of the catalogue relating to the name of the company? 117

A. I believe it was for the reason that there had been some dispute about that matter, and that the matter had been finaly settled and adjusted, and that we were legally entitled to our name. The question was brought up for the reason that it is sometimes asked who Mr. Remington and Mr. Sholes are, and of course I wanted to be informed on the matter.

X-Q. 187. What dispute and what settlement concerning the name do you refer to in your last answer? Please state fully what you mean thereby?

A. I do not know, as that was before my connection

118 with the company, but I understand that the name of the company was changed under the new organization at the time Mr. Fay took hold of it.

X-Q. 188. How was it changed, and why?

The question is objected to as not proper cross-examination, no foundation for any such question having been laid in the witness' direct examination; and is objected to further as calling for an expression of opinion concerning a matter about which it has not been shown that this witness is qualified to testify.

119 A. That was all before my time, and I am not informed and cannot answer the question.

X-Q. 189. Then, at the time you entered the service of the Remington-Sholes Company, you were informed by Mr. Fay, the president thereof, that there had been a dispute, or was a dispute, about the use of the name of the company, and it was for that reason he called your attention particularly to the last page or pages of the catalogue, which contains a statement concerning the names of the company and the origin of the machine, etc.?

Same objection.

120 A. Yes, sir; I believe that is correct.

X-Q. 190. You say in your answer to X-Q. 186, "The question was brought up for the reason that it is sometimes asked who Mr. Remington and Mr. Sholes are, and I wanted to be informed on the matter." Is it a fact or not that the question has been sometimes asked of you, as stated in your said answer?

A. Yes, sir; that is a fact.

X-Q. 191. Asked by whom?

A. By salesmen and prospective buyers.

X-Q. 192. Why?

A. Natural curiosity, I guess, but I don't know.

X-Q. 193. Do you mean to say you have no idea why they asked the question, and you wish the court to understand that you do not know? 121

A. I think it would be a natural inquiry, owing to the similarity of names of another machine, especially among people who are familiar with typewriters and their makers.

X-Q. 194. What other machine do you refer to in your last answer?

A. The machine manufactured by Wickoff, Seamans & Benedict, the Remington typewriter.

X-Q. 195. Then it was because there was a machine upon the market known as the Remington typewriter that the inquiry was made of you about the use of the name "Remington" in connection with the Remington-Sholes or Rem-Sho typewriter and the Remington-Sholes Company; is that correct? 122

A. Yes, sir; that is true, I think.

X-Q. 196. How frequently was that inquiry made of you by prospective purchasers or dealers or agents?

A. I am unable to state that; it was made now and then, not always.

X-Q. 197. But frequently?

A. Yes, sir; now and then. 123

X-Q. 198. And in that connection, did you sometimes tell these people that the Remington-Sholes typewriter or Rem-Sho typewriter was the only typewriter made by a Remington?

A. No, sir; I never told any one anything of that kind. I have told them, as stated before, that the Rem-Sho typewriter was the only machine now made by a Remington.

X-Q. 199. What was your object in telling prospective buyers or dealers or agents that?

A. My object then and now and always has been to get business, the same as any other salesman.

124 X-Q. 200. Is it or not a fact that the so-called name "Rem-Sho" is an abbreviation of the name "Remington-Sholes"?

A. It is an abbreviation of the name "Remington-Sholes," the same as "Adlake" is an abbreviation of the name "Adams & Westlake."

X-Q. 201. Is it or not a fact that you have seen the abbreviation "Rem," meaning "Remington," in advertisements published in newspapers referring to the Remington machine and to operators upon said machine?

A. I think I have seen such things. It is also true of other machines, but only in the case of stenographers
125 applying for positions.

X-Q. 202. Then it is a fact that stenographers often refer to the Remington machine as the "Rem" or the "Rem typewriter;" is that correct?

A. I never have heard the name spoken of in that way. I have seen it used in an ads. for a position.

X-Q. 203. Well, it is common, is it not, to abbreviate names?

A. Oh, yes; that is a common practice.

X-Q. 204. Do you know how the so-called Rem-Sho typewriter was spoken of and designated prior to Octo-
126 ber, 1897?

A. No, sir; not to my personal knowledge, because I did not know of the machine, never paid any attention to it.

X-Q. 205. This so-called "Rem-Sho" typewriter is sometimes spoken of and referred to in the trade and in advertisements as the "Remington-Sholes," is it not?

A. I have seen it so designated.

X-Q. 206. And heard it so spoken of, I presume?

A. Oh, I wouldn't say as regards to that; I have heard it called that; it is generally spoken of as the Remington-Sholes in our trade.

X-Q. 207. How many conversations did you ever have with Mr. Scorer about the Remington-Sholes or the Rem-Sho typewriter? 127

A. I think we talked a short time once, and I saw him briefly at another time, if I remember correctly.

X-Q. 208. Do you now remember, and are you now able to state, just what you said and what Scorer said in the conversations that occurred between you in reference to the sale of the Remington-Sholes or the Rem-Sho typewriter in your interviews with him at Pittsburgh?

A. No, sir; not in detail. I always talk about the same along those lines.

X-Q. 209. But you do not now remember just what you said on those occasions? 128

A. No, sir; I cannot recall the entire conversation.

X-Q. 210. Did you tell Mr. Scorer in substance and in effect that his business was to go out and sell typewriters; that that was what you wanted him to do?

A. I guess that was about what I told him; I generally tell them all that.

X-Q. 211. Your object was to have him get business; to sell the so-called Rem-Sho machine, I presume?

A. Yes, sir; that is my object, and that is my business.

X-Q. 212. How long is it since the blotters which have been introduced in evidence were first put out by the Remington-Sholes Company? 129

A. I cannot state positively; I think I have had them in my trunk for a year and a half or so.

X-Q. 213. I call your attention to "Complainant's Exhibit Remington-Sholes Company Letter, November 18, 1898," and "Complainant's Exhibit Remington-Sholes Letter of November 2, 1898," and ask you if the signature "G. A. Baldwin" to one exhibit and the initials "G. A. B." to the other are in your genuine handwriting?

130 A. Yes; I guess I cannot deny it; that is my writing.

X-Q. 214. Referring to "Defendant's Exhibit Diamond Supply Company Contract," I ask you to say whether or not all contracts between the Remington-Sholes Company and its dealers are in form and wording the same as said exhibit?

The question is objected to as immaterial and irrelevant and incompetent.

A. All that I have made are. That is as far as I can state.

131 X-Q. 215. And all these contracts are made upon a certain form previously prepared and printed by the Remington-Sholes Company; is that correct?

Same objection.

A. Yes, sir; I think they are, so far as I know.

*Redirect Examination by Mr. Fisher.*

R-D. Q. 216. In your answer to X-Q. 212 you have stated that you think that you have had the exhibit blotters for a year and a half or so. Do you mean to be understood by this answer that you have had both styles of the blotters that have been offered in evidence for such
132 length of time?

A. When I used the plural word "blotters" in my answer to X-Q. 212, I referred to the blotter marked "Defendant's Exhibit Rem-Sho Blotter No. 1." The blotter marked "Defendant's Exhibit Rem-Sho Blotter No. 2" has not been out for that length of time. As far as I know, blotter No. 2 was not put out until 1900; at least I did not see it until I returned from my last trip.

R-D. Q. 217. Did you ever negotiate any contract or agreement with a dealer in which any provision was made with respect to advertising, or by which the Rem-

ington-Sholes Company was to have any right to control or supervise the advertising that might be put out by said dealer? 133

A. No, sir, I never did.

R-D. Q. 218. In your answer to X-Q. 168 you have said that in your work of organizing the Remington-Sholes Company business you have used the statement "the only machine now made by a Remington," with respect to the Rem-Sho machine. I ask you whether you have ever had occasion to make this statement as an isolated statement?

Objected to as incompetent and improper, because it calls for the conclusion of the witness. 134

A. No, sir, I never had. The statement has always been made in connection with the demonstration of the machine.

R-D. Q. 219. State, if you recall, under what circumstances such statement has been made by you and the character of the conversations in which such statement was made?

Same objection as last, because it is improper and because the question does not call simply what was said on the occasion in question.

135

A. Well, when demonstrating the machine to a customer, the general mechanism of the machine is gone through with, the superior points have been brought out by myself, and I have used the statement at times, among other statements, made about the machine, its history, etc., and have used all combined, as any salesman would, I take it, to push the sale of the machine and effect its advancement. I think that is as near as I can come to the point.

R-D. Q. 220. I call your attention to a catalogue purporting to have been issued by the Typewriter Emporium, 212 La Salle street, Chicago, and to another

136 typewriter catalogue purporting to have been issued by the F. S. Webster Company, and ask you to state whether you find in either of said catalogues any statement having bearing upon the use of the word "standard" in connection with typewriting machines, and, if so, please read such statement for the benefit of the court.

The question is objected to as improper, upon the ground that it calls for new matter, not growing out of or relating to cross-examination, and also because it is secondary evidence and not the best evi-
137 dence, and the catalogues, if evidence at all, should be filed in evidence and must speak for themselves, and it is not competent to read extracts from the catalogues and place them upon the record.

A. Yes, sir. In the catalogue of the Typewriter Emporium I find these words: "First, then, we say that it is always best to buy one of the standard machines. There are five or six of these from which to choose." In the catalogue of the F. S. Webster Company I find these words: "That the best is always cheapest in the end is everywhere an admitted fact, and acting on this principle, and not caring to trust to their
138 own or other's judgment in selecting a little used machine of standard make;" and also in the Webster catalogue I find this: "For the Odell the manufacturers claim that in it they offer for sale at one-fifth the price a machine which will do the work of the so-called standard typewriters."

R-D. Q. 221. State, if you know, what is the business of the Typewriter Emporium and the F. S. Webster Company?

A. They are dealers in secondhand typewriters and typewriter supplies of all the makes on the market, I presume.

R-D. Q. 222. Did you ever see catalogues like these before, and, if so, where? 139

A. Yes, sir, a great many times, in the offices of the secondhand dealers themselves, and also among the typewriter users throughout the country.

Pages 9 and 92 of the Webster catalogue and page 5 of the Emporium catalogue referred to by the witness are offered in evidence and are marked "Defendant's Exhibit Page 5 Typewriter Emporium Catalogue" and "Defendant's Exhibit Pages 9 and 92 Webster Company Catalogue."

Complainant's counsel objects to the introduction 140
in evidence of said catalogues, and particularly to the pages of said catalogues designated by defendant's counsel upon the record, as immaterial, irrelevant, incompetent, because the same is hearsay evidence and not the statements of parties to this action, and are not the best evidence, and moves to strike the same from the record.

Chicago, May 12, 1900.

Present: Josiah McRoberts, Esq., counsel for complainants; George P. Fisher, Esq., counsel for defendants. 141

Mr. Baldwin having neglected to sign his deposition and having left the city, returning only this morning, this meeting is held at the request of defendant's counsel for the sole purpose of signing his deposition and before doing so to enable him to state what corrections, if any, he desires to make in his deposition, and thereupon Mr. Baldwin states as follows:

The answer to X-Q. 115 should read as follows:

"I always carry a machine with me as a sample, and when I was first in Austin, of course Mr.

142 Petmecky had none and I showed my sample to him. The next time I was there he had several."

The answer to X-Q. 206 should read as follows:

"Oh, I wouldn't say as regards that; I have heard it called that; it is generally spoken of as the Rem-Sho in our trade."

G. A. BALDWIN.

HAMLIN E. HATCH, a witness of lawful age, being first duly cautioned and sworn, and called on behalf of defendant, testifies as follows:

143 Q. 1. State your name, age, residence and occupation.

A. Hamlin E. Hatch; age, twenty-nine; residence, Detroit, Michigan; and occupation, salesman for the Remington-Sholes Company.

Q. 2. How long have you been connected with the Remington-Sholes Company?

A. A little over two years.

Q. 3. During the period of your employment with the Remington-Sholes Company have you been located in the City of New York?

A. Part of the time—from when I went with them,
144 March, '98, to August, '98.

Q. 4. In connection with what firm, or in the store of what firm, were you employed as salesman of the Rem-Sho typewriter from March until August, 1898?

A. Page, Dennis & Company.

Q. 5. What was the character of your business while in New York?

A. It was a salesman of the Rem-Sho typewriters.

Q. 6. Were there from March until August, 1898, any signs in or about the store of Page, Dennis & Company relating to typewriters, and if so, state what you recall about such signs?

A. There were signs in there relating to typewriters. 145

Q. 7. State where said signs were located, or such of them as you recall?

A. There was one sign in the show-window on Broadway and one hanging on the wall over the desks.

Q. 8. What was the size of the sign that hung upon the wall over the desks?

A. As near as I remember, the sign was two or three feet wide and seven or eight or perhaps ten feet long.

Q. 9. What was the matter appearing upon that sign?

The question is objected to by complainant's counsel because incompetent and improper; because it calls for secondary evidence; not the best evidence upon the subject inquired about in the question. 146

A. "Rem-Sho Typewriter. Manufactured by the Remington-Sholes Company of Chicago," or words to that effect.

Q. 10. State the character of the sign that appeared in the front window of the store of Page, Dennis & Company.

A. It was a pasteboard sign; cardboard.

Q. 11. About what size? 147

A. Two or three feet square.

Q. 12. I call your attention to "Defendant's Exhibit Rem-Sho Paste-Board Sign," and ask you to state wherein it resembles and wherein it differs from the sign exhibited in the front window of Page, Dennis & Company while you were employed at such place.

Same objection as last.

A. As I remember, there was a sign in the window like the "Defendant's Exhibit Rem-Sho Paste-Board Sign."

148 Q. 13. Did you see any points of difference between this exhibit sign and the one which you say was displayed in the window of Page, Dennis & Company?

Same objection.

A. I don't see any difference.

Q. 14. State where you have seen signs like "Defendant's Exhibit Rem-Sho Paste-Board Sign" before to-day.

Same objection.

A. In several different offices of the company.

Q. 15. While you were employed in New York in
149 the sale of the Rem-Sho typewriter were any typwriting machines displayed in the office of Page, Dennis & Company?

A. Yes, sir; always. They were Rem-Sho typewriters.

Q. 16. State how said typewriters were marked. I mean what name, if any, was upon said typewriter.

Same objection.

A. There was a name-plate just above the key-board, or just back of the key-board, that said "Remington-Sholes Company Chicago."

150 Q. 17. I call your attention to "Defendant's Exhibit Remington-Sholes Company Name-Plate," and ask you to state whether you have ever seen a name-plate like this before, and bearing the same inscription.

A. I have.

Q. 18. Where?

A. On Rem-Sho typewriters.

Q. 19. Did you ever see a Rem-Sho typewriter bearing any other or different name-plate?

A. I don't recall any. The later machines have also a paper table with the name "Rem-Sho" stencilled through it.

Q. 20. I call your attention to "Complainant's Exhibit Rem-Sho Catalogue," and ask you to state whether you are familiar with such catalogue, and if so, when and where you first saw it. 151

A. I think the first time I saw a catalogue like this was in the latter part of the winter of '97-'98, just prior to my engaging with the Remington-Sholes Company, in New York City.

Q. 21. Were any catalogues used in the sale of Rem-Sho typewriters at the office of Page, Dennis & Company?

A. Yes, sir. 152

Q. 22. What kind of catalogues were they?

A. Catalogues like "Complainant's Exhibit Rem-Sho Catalogue."

Q. 22¼. How were these catalogues displayed and how were they used at the office of Page, Dennis & Company while you were there engaged in the sale of Rem-Sho typewriters?

A. There was a small table just inside the railing covered with catalogues and advertising matter of different kinds relating to Rem-Sho typewriters. Whenever a person came into the office and inquired about the machine it was the duty of the manager or salesman 153 showing the machine to give them advertising matter in the shape of catalogues and leaflets when they went out.

Q. 23. I call your attention to a paper writing that I now hand you, and ask you to state what it is, if you know.

A. It is what is called a "sale slip" of the Remington-Sholes Company.

Q. 24. I ask you to state whether you are familiar with the signature at the bottom of said sale slip, and if so, state whose signature it is, and whether or not it is genuine.

154 A. This is the signature of T. O. Parker, and is genuine.

Q. 25. State, if you know, for what purpose this sale slip was used and whether or not there was any custom or practice at the store of Page, Dennis & Company in regard to the use of sale slips of this character.

A. When a sale was made the manager of the typewriter department would make out one of these sale slips and turn it over to Page, Dennis & Company.

Q. 26. I notice upon said sale slip the expression "Commission to Hatch $6.50." State, if you know, what this expression was designed to indicate?

155

Question is objected to as improper, because it calls for the opinion and conclusion of the witness, and that the slip is the best evidence of its contents.

A. It was an order for Page, Dennis & Company to credit my account with $6.50 commission.

The sale slip referred to is offered in evidence, and the same is marked "Defendant's Exhibit Weingart Sale Slip."

156 The said exhibit is objected to as immaterial and irrelevant.

Q. 27. State, if you know, why the expression "Commission to Hatch $6.50" was placed upon the sale slip.

Same objection as last.

A. Because the machine went into my territory.

Q. 28. Had you ever seen Mr. S. Weingart?

A. Yes, sir; I called at his school.

Q. 29. Did you call at his school before or after June 29, 1898?

A. Before.

Q. 30. And did you see Mr. Weingart at the time you made such call? 157

A. I did.

Q. 31. What occurred at the time you made such call upon Mr. Weingart, as near as you remember?

A. As near as I remember, I introduced myself by handing him my card. I did not have any lengthy conversation with him.

Q. 32. Did you have any conversation with Mr. T. O. Parker, whose name is mentioned upon the Weingart sale slip, in regard to such sale?

A. I cannot swear that I did have about this sale prior to the time it was made. 158

Q. 33. Have you any recollection of having any conversation with Mr. Parker in regard to discount to be given school teachers or principals of schools?

Objected to by complainant's counsel as immaterial and irrelevant.

A. Yes, sir; I did.

Q. 34. When did such conversation occur, as near as you can recall?

Same objection as last.

A. It was at a time when the manager was out of town, and Parker came to me for the information with regard to school discounts, and at that time he was talking with a man and showing him a machine in the office. 159

Q. 35. Did you ever have more than one conversation with Mr. Parker in regard to school discounts?

Same objection as last.

A. Not that I recall.

Q. 36. Do you recall the party with whom Mr. Parker was talking at the time he inquired of you as to school discounts?

Same objection.

160 A. Not well enough to describe him. I paid no attention to the matter; I was busy working at my desk; I simply answered Parker's question.

Q. 37. Did you notice the party with sufficient care to enable you to say whether you had seen him before to recognize him?

A. I cannot say that I did.

Q. 38. What salesmen were in the store at the time of this conversation between you and Mr. Parker relative to school discounts?

Same objection.

161 A. I do not remember.

Q. 39. Did you ever see at the store of Page, Dennis & Company, or at any office of the Howe Scale Company, a sign reading "Remington Typewriter Company"?

A. No, sir.

Q. 40. While you were engaged in selling Rem-Sho typewriters at the store of Page, Dennis & Company, or elsewhere, did you ever inform anyone that the Howe Scale Company or Page, Dennis & Company sold the Remington typewriter?

162 Same objection as last, also as not competent and proper evidence in rebuttal of complainant's proofs in this case.

A. No, sir.

Q. 41. Was there ever displayed at the store of Page, Dennis & Company, while you were there employed, any sign on which the name "Remington" appeared disassociated from the name "Sholes"?

Same objection.

A. No, sir.

Q. 42. When you called upon Mr. Samuel Weingart did you leave a card?

A. I did.

Q. 43. Can you produce such a card as you left with him? 163

A. I have none with me.

Q. 44. What was stated upon the card?

Question is objected to by complainant's counsel as incompetent and improper, as it calls for secondary evidence, which is not the best evidence, and no foundation has been laid for the introduction of secondary evidence.

A. There was a cut of the Rem-Sho typewriter, with the name "Rem-Sho" typewriter, and my name on the bottom. I cannot remember every word that was 164
on the card. It had the name of Page, Dennis & Company, with their Broadway address.

Q. 45. I call your attention to a business card, and ask you to state whether you have ever seen a card like this before, and if so, where.

A. As I remember it, that is the same kind of a card that I used in soliciting when I was in the New York office.

Q. 46. How does said card compare with the card which you say you left with Mr. Samuel Weingart when you called at his school?

165

Same objection as last.

A. I think it is the same card, with the exception that I had my name on the bottom.

The card referred to by the witness is offered in evidence, and the same is marked "Defendant's Exhibit Page, Dennis & Company Card."

Same objection to the exhibit card.

*Cross-Examination by Mr. Donnelly.*

X-Q. 47. When did you first engage in the sale of typewriting machines, and for whom?

166 A. For the Smith-Premier Company, in the year about '93.

X-Q. 48. How long did you continue in the service of the Smith-Premier Company?

A. Only three or four months at that time.

X-Q. 49. Where next, if at all, did you engage in the sale of typewriting machines, and for whom?

A. I think it was in the year '96, with the Peerless Typewriter Company or their agents.

X-Q. 50. How long did you continue in the service of the Peerless Typewriter Company?

167 A. About two or three months.

X-Q. 51. Where next did you engage, if at all, in the sale of typewriting machines, for whom and for how long a period?

A. I think it was in September, 1896. Then I went with the Smith-Premier Company in New York City, and was with them until, I think, November, '97.

X-Q. 52. And then what did you do, if anything?

A. I went with the Elliott & Hatch Book Typewriter Company of New York, and staid with them until, I think, it was March, '98, when I went with the Remington-Sholes Company, at New York, and re-
168 mained with the Remington-Sholes Company in New York until the latter part of August, '98, then I was sent to Grand Rapids by the Remington-Sholes Company to open a branch office. I was manager of the branch office there for about a year, since which time I have been on the road for them.

X-Q. 53. What has been the character of your duties since you have been on the road for the Remington-Sholes Company?

A. Appointing dealers and helping them to sell machines.

X-Q. 54. What territory have you operated in, and

what dealers, if any, have you appointed for the Rem- 169
ington-Sholes Company?

A. Michigan, Northeastern Indiana, Northern Ohio, Western Pennsylvania, and Canada as far east as Toronto. I appointed Bender & Brewer, Grand Rapids, which was later called or formed into a company by the name of Bender, Brewer & McGurrin; J. P. Langley, at Saginaw; Charles S. Hampton, at Petoskey; Merrick Stocking, Cadillac; W. R. Smith, Big Rapids; Thomas Daniel, of Jackson; E. P. Goodrich, Ypsilanti; a dealer at Alpena; Mr. Case, court reporter at Detroit; L. G. Raymer, Toledo; Mr. Sayre, Pitts- 170
burg. There may be others that I do not now recall.

Defendant's counsel desires to enter his protest against this line of cross-examination, as it is not only immaterial and irrelevant to the issues in this cause, but it is also improper, as no foundation therefor has been laid in the direct examination of this witness.

X-Q. 55. What is the character of the duties which you perform in connection with the appointing of dealers for the Remington-Sholes Company in the territory mentioned by you in your previous answers? 171

Same objection.

A. To get a good live man or firm to sell the machines and draw up contracts.

X-Q. 56. Do you also instruct these dealers with regard to their duties or the methods to be pursued by them in the sale of the Remington-Sholes typewriter, or Rem-Sho typewriter, so-called?

Same objection.

A. I do not.

X-Q. 57. Have you ever supplied any of the dealers that you have selected with any instructions as to facts

172 to bear in mind and general points, like "Defendant's Exhibit Remington-Sholes Instructions to Dealers," or have any such instructions been delivered to the dealers appointed by you, to your knowledge?

Same objection.

A. I always make a dealer thoroughly conversant with the machine, but I never have delivered to a dealer printed instructions such as mentioned in the question. If any such instructions have been given to dealers it has been done so by the company direct.

X-Q. 58. Have you ever before seen such instruc-
173 tions which were prepared for and furnished by the Remington-Sholes Company with dealers, agents or branch offices?

Same objection.

A. I have.

X-Q. 59. Where and when?

Same objection.

A. I cannot say that I have ever seen a dealer have these printed instructions. I have a copy of them myself.

X-Q. 60. How long have you had a copy of such in-
174 structions yourself?

A. I cannot say exactly.

X-Q. 61. State as nearly as you remember.

Same objection.

A. Ever since going with the Remington-Sholes Company I have had different instructions, printed and otherwise, but I cannot say when I received the instructions mentioned.

X-Q. 62. I show you "Complainant's Exhibit Instructions to Agents by the Howe Scale Company," and ask you to examine the same and say whether or no you saw instructions like those here in this typewritten

copy, or have had such in your possession during the 175
time that you were employed in the New York office in the year 1898, or at any time subsequent thereto.

A. I cannot say that I ever had instructions like this, as a whole.

X-Q. 63. Is it or not a fact that you have communicated to the dealers whom you have appointed in the territory mentioned by you the substance of the facts and points set forth in "Defendant's Exhibit Remington-Sholes Company Instructions to Dealers;" I mean orally or otherwise?

Same objection. 176

A. As stated before, I have always made a dealer thoroughly conversant with the points of the Rem-Sho, pointing out what we claimed were advantages over other typewriters. I have usually left it to dealers' judgment how to sell machines, but have always tried to encourage and help along the sale of the machine by advice as much as possible.

X-Q. 64. Have you or not called the dealer's attention to the origin of the so-called Rem-Sho machine, and to the facts stated in relation thereto in "Defendant's Exhibit Remington-Sholes Company Instructions to Dealers"? 177

A. I have explained the origin of the Rem-Sho machine to dealers when called upon to do so.

X-Q. 65. Do the dealers sometimes call your attention to the fact and inquire as to the origin of the so-called Rem-Sho typewriter?

A. Occasionally.

X-Q. 66. Do they inquire also as to its connection with any other typewriter or concern than the Remington-Sholes Company?

A. I have sometimes been asked if we were in the Typewriter Trust.

178 X-Q. 67. Have you ever been asked whether the Rem-Sho machine, so-called, or the Remington-Sholes Company had any connection with the so-called Remington typewriter?

A. I have been asked that question.

X-Q. 68. By whom?

A. I don't remember.

X-Q. 69. Do you remember how frequently that inquiry has been made of you?

A. I cannot say how frequently.

X-Q. 70. Do you remember where such inquiry has been made?

179 A. I do not.

X-Q. 71. Do you remember now whether the inquiry was made by a dealer or by prospective buyers, or both, of the so-called Rem-Sho typewriter?

A. The inquiry has probably been made by both.

X-Q. 72. Who was the manager of the New York office when you were located there from March, '98, to August, '98?

A. Mr. Trenholm.

X-Q. 73. That office, as I understand your testimony, was in the store of Page, Dennis & Company,

180 341 Broadway, New York City?

A. Yes, sir.

X-Q. 74. And that office was, as you understood, really the office or place of business of the Howe Scale Company. Is that correct?

A. As I understand it, it was the office of Page, Dennis & Company and they were agents for the Howe Scale.

X-Q. 75. The business of Page, Dennis & Company consisted largely, if not wholly, in the sale of scales manufactured by the Howe Scale Company. Is that correct?

A. They sold scales, refrigerators, trucks and bicy- 181
cles.

X-Q. 76. Do you know what the relations of Page, Dennis & Company with the Howe Scale Company were as regards the sale of the Rem-Sho typewriters during the time you were in the New York office?

A. I do not.

X-Q. 77. When were you last in the store of Page, Dennis & Company, 341 Broadway, in which the business signs and advertising media of the Remington-Sholes Company were displayed, as stated by you in your direct testimony?

182

A. In the latter part of August, '98.

X-Q. 78. That was the last time you saw any of said signs; I mean the particular signs used in or about said store?

A. I have been in New York once since I left in August, '98, and at that time did not visit the store of Page, Dennis & Company, and have never seen the identical sign mentioned since August, '98.

X-Q. 79. You have given the contents of those particular or identical signs which were hung up or exhibited in or about the store of Page, Dennis & Company from recollection, I presume?

188

A. I have never seen but one kind of a pasteboard sign. These are universal in all their offices, and the sign which was on the wall I have described as I recollect it.

Question repeated and the witness is requested to hear it read and to answer it categorically.

A. Yes, sir.

X-Q. 80. On all the signs displayed in the New York store of Page, Dennis & Company, and upon all the advertising media of the Remington-Sholes Company, did the name "Remington" appear?

184 A. The "Remington-Sholes Company" or "The Remington-Sholes Typewriter" appeared.

X-Q. 82. Did not the name "Remington" always appear upon said signs and advertising media as a part of the contents thereof?

A. It never appeared separate from the name "Sholes."

X-Q. 83. But it always appeared with the name "Sholes," did it not?

A. Either the "Remington-Sholes Company" or "Remington-Sholes," usually both.

185 X-Q. 84. Was it not both on all the signs in and about said New York store?

A. I cannot say that it was.

And thereupon adjournment was had until Thursday, May 10th, 1900, at 10 o'clock A. M

Thursday, May 10th, 1900, 10 o'clock A. M. Met pursuant to adjournment. Present as before. Cross-examination of witness H. E. Hatch resumed.

X-Q. 85. During the time that you were in the office of Page, Dennis & Company in New York City, and
186 engaged as a salesman of the so-called Rem-Sho typewriter, please state briefly what the character of your duties as salesman was.

A. To solicit the trade and sell all the typewriters I could.

X-Q. 86. In what district in the City of New York did you canvass the trade for the purpose of selling the so-called Rem-Sho machines?

A. Part of the time my territory was everything north of 42nd street, and part of the time the Wall street territory.

X-Q. 87. Kindly explain just what you mean by

the "Wall street territory;" that is to say, what was the extent of that territory or boundary line? 187

A. From Broadway east to the river and from Beekman street south to Wall. I was, however, sometimes sent out of my territory on a particular deal.

X-Q. 88. During the time you were at the New York office and canvassing the territory mentioned by you in your previous answers, state whether or no you were out in that territory canvassing and endeavoring to make sales every day during business hours.

A. I was out and in.

X-Q. 89. Do you mean out of the office and in the office every day during business hours? 188

A. I do.

X-Q. 90. I presume that you called on a great many different people in the territory that you canvassed during the time that you were employed in the New York office; is that correct?

A. It is.

X-Q. 91. Your object in calling upon people was to sell or endeavor to sell the so-called Rem-Sho typewriter, was it not?

A. Yes.

X-Q. 92. Do you now recall all the names of persons or firms or concerns upon whom you called, or the places at which you called, in the City of New York during the time you were engaged in selling typewriters at the office of Page, Dennis & Company? 189

A. I do not.

X-Q. 93. In going about your territory in New York City canvassing for sales and seeking purchasers of the so-called Remington-Sholes or Rem-Sho machine, did you or not see any so-called Remington typewriters in places of business where you called, or otherwise?

A. I did.

190 X-Q. 94. You probably found a great number of such machines in use in the territory in which you canvassed, did you not?

A. Yes, sir.

X-Q. 95. About how many Remington-Sholes or Rem-Sho machines, so called, did you sell in the territory canvassed by you during the time you were in New York City?

Counsel for defendant objects to the question as immaterial, irrelevant and not proper cross-examination.

191 A. I don't know how many I did sell.

X-Q. 96. Did you sell quite a number of such machines in New York City while you were in the New York office?

Same objection.

A. I did.

X-Q. 97. Did you take out any Remington machines from offices and replace them with Remington-Sholes or Rem-Sho machines, so called?

Same objection.

A. I did.

192 X-Q. 98. You have stated in your direct testimony that you called upon Mr. S. Weingart at his school in New York City, and that your interview was not lengthy but a brief one. Is that your testimony?

A. Yes, sir.

X-Q. 99. State when you called upon S. Weingart.

A. I canot give the date.

X-Q. 100. Kindly give the date as accurately as you can from recollection or otherwise.

A. It was in April or May, 1898.

X-Q. 101. How came you to call upon Weingart?

A. I made a business of calling on all the business colleges or typewriting schools in my territory.

X-Q. 102. This call then was not by previous ar- 193
rangement with Prof. Weingart?

A. No, sir.

X-Q. 103. What time in the day was it when you made this call on Prof. Weingart?

A. I cannot state exactly; it was some time between nine in the mornig and four in the afternoon.

X-Q. 104. Is that as near as you can fix the time of day when you made this call upon Prof. Weingart?

A. It is.

X-Q. 105. Where was it that you made this call upon Prof. Weingart?

194

A. At his place of business.

X-Q. 106. At his place of business, where located?

A. At his school; I don't remember the name of the street; 91st or 92nd; somewhere up there.

X-Q. 107. Was he in when you called?

A. He was.

X-Q. 108. Where did you first meet him after you called?

A. I don't know that I ever met him after I first called on him.

X-Q. 109. Where did you first meet him at the time you called; I mean in what part of the building? 195

A. I met him in his office.

X-Q. 110. Where was the office located in the building?

A. I do not recall now just where it was located.

X-Q. 111. Was Prof. Weingart in his office at the time you first entered it?

A. As I recall it, he was.

X-Q. 112. You are not certain as to that?

A. No, sir.

X-Q. 113. You cannot say that Prof. Weingart was not occupied in his school room at the time you called

196 and came to the office after you entered it in consequence of his being sent for, can you?

A. I cannot.

X-Q. 114. Is it not a fact that at the time of your call you found Prof. Weingart to be a busy man and much occupied with the duties of his school, and hence your interview was a very brief one?

A. As I remember it, I only had a few words with him, and left him my card.

X-Q. 115. I presume you do not now recall just what you said on that occasion, or what, if anything, he said; is that correct?

197 A. I do not recall the exact words.

X-Q. 116. You were, during that period, calling on a great many people soliciting business, and of course could not remember just what was said on the occasion of these visits with prospective buyers of typewriters; is not that correct?

A. I usually said about the same thing to all of them.

X-Q. 117. That is a matter, of course, of general recollection?

A. I always handed them my card and said I should like to have them see the machine, and always asked them if I could not send one up and show it to them.

198 This conversation invariably took place where I made a new call.

Complainant's counsel moves to strike out the answer to the question as not responsive to the question, as volunteered and not called for.

X-Q. 118. At the time you visited these various offices in your territory canvassing for sales for your machines, and endeavoring to sell to prospective buyers, did you make any memoranda of the various conversations which you had with people concerning the sales of the Rem-Sho typewriter, so called?

A. No, sir.

X-Q. 119. Then, as to any special or particular interview with any prospective buyer of a Rem-Sho typewriter, you testify, and have to testify, simply from recollection of what occurred; is such the fact? 199

A. In substance, it is.

X-Q. 120. And is it a fact that you could not now repeat the exact language which you used when you were endeavoring to sell the Rem-Sho typewriter to prospective buyers in the year 1898?

A. I can give you nearly word for word the conversation that always took place wherever I made a new call, and the conversation is the same to-day.

X-Q. 121. Then I understand that you have a set speech which you make on all occasions; is that so? 200

A. No, sir.

X-Q. 122. Well, you have a statement which is always the same?

A. Whenever I call on a new customer or new prospective buyer, I state to them that I represent the Rem-Sho typewriter, and would like the privilege of showing them the machine, either at their office or our office. This is not a set speech, but I invariably make a request of this kind.

Answer is objected to as not responsive to the question, and complainant's counsel moves to strike it from the record. 201

X-Q. 123. Have you ever told prospective buyers of so-called Rem-Sho machines that it was or is the only machine now made by a Remington?

A. I have not.

X-Q. 124. Have you ever made the statement to anybody?

A. I have not.

X-Q. 125. Have you seen that statement in catalogues of the Remington-Sholes Company which you have circulated or given to dealers or buyers?

202 A. I have seen that statement in their catalogue, but I cannot say that I have circulated these catalogues to dealers or buyers.

X-Q. 126. Where did you see that statement in their catalogue?

A. In the Chicago factory.

X-Q. 127. When?

A. I think it was last September.

X-Q. 128. How came you to notice that statement in the catalogue at the Chicago factory?

A. I was here last September at the factory, and was looking through a catalogue, and I remarked that I
203 had seen something in the catalogue I never seen before. I never remember noticing that statement in any of the catalogues which I have received from the factory when in my territory.

X-Q. 129. That statement which you saw in the catalogue at the factory of the Remington-Sholes Company made a distinct impression on your mind at the time, did it?

A. I don't know that it made a distinct impression, but I knew I had never seen it before.

X-Q. 130. Did you think it was a little peculiar? I
204 mean that statement in the catalogue.

A. I don't know that I did.

X-Q. 131. Did you say anything to Mr. Fay or anybody else about the statement?

A. I did not say anything to Mr. Fay. As I said before, I made the remark, I think, to Mr. Fierlein that I had seen something that I had never seen before in their catalogue.

X-Q. 132. What did Fierlein say?

Question is objected to as immaterial and irrelevant, and not proper cross-examination.

A. I don't remember that he said anything. He 205
may have done so, but I have forgotten it.

X-Q. 133. What did you understand that statement to refer to, or to whom?

Same objection.

A. I don't know what you mean.

X-Q. 134. I mean to what or to whom did you understand the statement which you saw in the catalogue that it was the only machine now manufactured by a Remington to refer?

Same objection to this and all similar questions.

A. I understood it to mean that Mr. Franklin Rem- 206
ington was the only Remington in the typewriter business.

X-Q. 135. And was making that machine?

A. I don't know that I understood that he was making the machine.

X-Q. 136. Who did you understand was making the machine?

A. The Remington-Sholes Company.

X-Q. 137. You did not understand then that Franklin Remington was making the machines, but that the Remington-Sholes Company was making them?

A. Yes, sir. 207

X-Q. 138. Do you remember whether or not in any of the instructions sent out or furnished by the Remington-Sholes Company to dealers or agents or salesmen, such instructions contained the following language or that in substance: "The connection of our Mr. Remington with this machine and the relation of the old Remington standard, the fact that this is the second generation of typewriter builders and that the same standard of excellence is being maintained in the manufacture of this machine as all other goods which have been produced by the Remingtons"?

208 A. In the instructions which I have received I do not recall having seen that statement.

X-Q. 139. Have you seen any instructions containing that statement?

A. I have not, except one which was shown me in "Complainant's Exhibit Instructions to Agents by the Howe Scale Company."

X-Q. 140. Have you seen a similar statement in the instructions issued by the Remington-Sholes Company and which are embodied in "Defendant's Exhibit Remington-Sholes Company Instructions to Dealers"?

209 A. I do not recall seeing such a statement until just shown me in "Defendant's Exhibit Remington-Sholes Company Instructions to Dealers."

X-Q. 141. Do you mean to say as a matter of positive recollection that you never saw such instructions as are contained in "Defendant's Exhibit Remington-Sholes Company Instructions" and in "Complainant's Exhibit Instructions to Agents by the Howe Scale Company" before they were shown here and while you were upon the stand of the witness?

A. I will state positively that I never saw that portion of the instructions quoted above until it was shown

210 me on the stand.

X-Q. 142. Please state whether or not you have now, or have ever had, a copy of the instructions issued by the Remington-Sholes Company and embraced in "Exhibit Remington-Sholes Company Instructions to Dealers"?

A. I believe that these instructions were furnished me, but I cannot state when, and I repeat that I never saw that portion of the instructions quoted.

X-Q. 143. Did you read the instructions and the whole of the instructions furnished you by the Remington-Sholes Company?

A. Not always.

X-Q. 144. Did you in this case? 211

A. No, sir.

X-Q. 145. Why did you not read them?

A. Because they started out, "Facts to Bear in Mind," "General Points," "Special Points," all of which I was perfectly familiar with and I did not think it necessary to read them.

X-Q. 146. Do you mean to tell this court that you did not think it necessary to read the entire instructions communicated to you by the Remington-Sholes Company, of whom you are an employe?

A. I did not think it necessary to read over some- 212
thing I knew all about, for I supposed the whole instructions dealt with the construction of the machine.

X-Q. 147. Did you think you had a right to suppose or assume, without reading the entire instructions issued to you by your employer?

A. I think so.

X-Q. 148. Are you in the habit of reading part of a letter or communication and omitting the other part when it is addressed to you by your employer?

A. No, sir.

X-Q. 149. Do you recall any other instance where you have omitted to read all of the instructions which 213
were communicated to you by the Remington-Sholes Company?

A. I do.

X-Q. 150. Then you decide yourself as to what portion of the instructions communicated by the Remington-Sholes Company you will read or consider; is that so?

A. If it is something I am not familiar with, I read it very carefully.

X-Q. 151. Well, were you familiar with all that is contained in "Defendant's Exhibit Remington-Sholes Company Instructions to Dealers"?

214 A. I have stated before the way the first two or three pages looked I had good reason to suppose that it dealt with the construction of the machine. I just glanced through it.

X-Q. 152. And you did not notice or consider that part of the end of the statement which sets forth the origin of the Remington-Sholes machine and the connection of Mr. Franklin Remington therewith?

A. I knew all about the origin of the machine long before I got those instructions.

X-Q. 153. And did you know all about the connection of Mr. Franklin Remington with that machine before you got the insructions?

215

A. Of his connection with the company at what time?

X-Q. 154. At any time previous to the time when the instructions were communicated to you?

A. I thought I did.

X-Q. 155. Then you thought you knew so much about the whole subject contained in "Defendant's Exhibit Remington-Sholes Instructions to Dealers" that it was not worth your while to read them; is that correct?

A. I was not a dealer.

216 X-Q. 156. Is that the reason you did not read them?

A. Not alone.

X-Q. 157. But you were appointing dealers, were you not?

A. I was.

X-Q. 158. And giving them instructions, I suppose, as to how they should sell this machine or present it to prospective buyers?

A. I have already stated that I made a dealer thoroughly familiar with the different points of the machine, and I left it to his judgment as to how to get the best results.

X-Q. 159. Do you know Mr. McGurrin? 217

A. I do.

X-Q. 160. What is his Christian name?

A. I know both Frank and Charles.

X-Q. 161. I intended to refer to the Mr. McGurrin who is a member of the firm mentioned by you as being agents or dealers for the Rem-Sho typewriter, so called, at Grand Rapids?

A. I know the Mr. McGurrin who is located at Kalamazoo, a member of the firm of Bender, Brewer & McGurrin, our dealers at Grand Rapids.

X-Q. 162. Is he a typewriter operator and stenographer? 218

A. Yes, sir.

X-Q. 163. And gives exhibitions from time to time on the so-called Rem-Sho machine?

A. Yes, sir.

X-Q. 164. I call your attention to "Defendant's Exhibit Diamond Supply Company Contract," and ask you to examine the same and to say if you know whether the dealers which you appoint in the territory which you canvass have executed or entered into contracts similar to that embodied in said exhibit?

The question is objected to as immaterial and ir- 219
relevant, and as not proper cross-examination, and without repetition the same objection is continued to all questions relating to contract matters and concerning which this witness has not testified on his direct examination.

A. Some of them have.

X-Q. 165. Where that contract has not been entered into, has the contract been written or verbal?

A. We have no verbal contracts.

X-Q. 166. How does the printed contract which has been entered into, other than "Defendant's Exhibit

220 Diamond Supply Company Contract," differ therefrom?

A. It differs all the way through; an entirely different contract.

X-Q. 167. Is it a printed form which is furnished by the Remington-Sholes Company?

A. It is.

X-Q. 168. State briefly, and so far as you are able to, the substance of the contract entered into with dealers of the Remington-Sholes Company, other than "Defendant's Exhibit Diamond Supply Company Contract"?

221

Same objection as last; also as incompetent.

A. It is where they buy the machines outright and pay cash for them.

X-Q. 169. How many such dealers are there in the territory which you cover and which is now under your supervision?

A. I don't know exactly.

X-Q.170. What proportion of the dealers in said territory are doing business with the Remington-Sholes Company on the basis of cash purchases, or purchasing

222 outright of the Remington-Sholes machine so called?

A. I don't know.

X-Q. 171. About how many?

A. I don't know, without looking it up.

X-Q. 172. Can you tell me what proportion of the dealers in the territory controlled by you are under contract to purchase outright, or have that arrangement with the Remington-Sholes Company?

Defendant's counsel desires to again protest against burdening the record by this line of questions, which are manifestly not proper cross-ex-

amination and can have no bearing whatever upon the issue in this case. 223

A. I cannot state what proportion.

X-Q. 173. Can you give me any idea or an approximate estimate?

A. Well, about three out of ten is a fair estimate of the dealers that buy their machines outright, in my territory.

X-Q. 174. State approximately about how many dealers in the Remington-Sholes machine there are in the territory under your control.

A. Those heretofore mentioned by me in my examination and a few more. 224

X-Q. 175. Are there any persons now acting as dealers or agents in the territory under your control at present, I mean dealers or agents for the sale of the so-called Rem-Sho machine, who were formerly engaged in the sale of the so-called Remington machine?

A. I believe we have some dealers that have at some time sold Remington typewriters.

X-Q. 176. About how many?

A. Four or five is all I recall to mind now.

X Q. 177. And where are those persons located at present? 225

A. At Grand Rapids, Kalamazoo, Big Rapids, Jackson and Ypsilanti, Michigan. I am under the impression that J. P. Langley, of Saginaw, at one time sold Remingtons, but I am not positive.

X-Q. 178. To what extent is the so-called Remington typewriter used in the territory which is now under your control, as the agent and organizer of the Remington-Sholes Company?

A. It is quite largely used.

X-Q. 179. Is the so-called Rem-Sho typewriter

226 largely used and sold in this territory under your control?

A. We sell quite a few machines.

X-Q. 180. Had this territory been canvassed to any extent before you began canvassing it for the sale of so-called Rem-Sho typewriters.

A. I don't know to what extent it had been canvassed.

X-Q. 181. Were there many so-called Rem-Sho machines, so called, in use when you took charge of said territory?

227 A. There were quite a few.

X-Q. 182. As many as there were of so-called Remington machines?

A. No, sir.

X-Q. 183. About how long have you been acquainted with the so-called Remington typewriter?

A. Since 1887.

X-Q. 184. How long have you been acquainted with the so-called Remington-Sholes or Rem-Sho typewriter?

A. I think it was in the winter of 1897 when I became very well acquainted with it.

228 X-Q. 185. When did you first learn that there was a machine in the market under the name "Remington-Sholes" or "Rem-Sho" typewriter?

A. I cannot recollect, but I think it was in the year '96 when I first heard of it.

X-Q. 186. Prior to 1896, had you ever heard of a concern or a typewriting machine which was using the name "Remington" upon or in connection with its typewriting machines, other than Wyckoff, Seamans & Benedict?

A. I don't think I had.

X-Q. 187. Before you knew of the so-called Rem-

Sho or Remington-Sholes typewriter, was there, to your knowledge, any typewriting machines on the market under the designation or name "Sholes"? 229

A. I cannot say of my own knowledge that I knew of a machine by the name of Sholes, but I knew from reading that a man by the name of Sholes had invented the Remington typewriter, and that the first machines were called the Sholes & Glidden.

X-Q. 188. That you understood to be the original Remington machine, did you?

A. Yes, sir.

*Re-Direct Examination by Mr. Fisher.* 230

R-D. Q. 189. In your answer to X-Q. 64 you have stated that you have explained the origin of the Rem-Sho machine to dealers when called upon to do so. Please state what explanation you have given in this connection.

A. I have told them what I knew about it by referring them to the page in our catalogue that refers to this subject.

R-D. Q. 190. In what way, if at all, have you made any explanation to others than dealers with respect to the origin of the Rem-Sho machine, when such question has been raised? 231

A. I have always referred them to the page in the catalogue, and in many instances have read it to them myself.

R-D. Q. 191. What instructions or explanations have you ever received, if any, in respect to the origin of the Rem-Sho machine, or in respect to the manner of explaining the same, from Page, Dennis & Co., or from the Howe Scale Company, or from the Remington-Sholes Company, or any one connected with either of said concerns?

A. I have received no instructions at all from any of them.

232 R-D. Q. 192. In the course of your cross-examination the inquiry was made of you, if you have ever been asked whether the Rem-Sho machine, so called, or the Remington-Sholes Company had any connection with the so-called Remington typewriter, and you have stated that such question has been asked. Please state when such question has been asked of you.

A. It has been asked at different times. I cannot tell when nor where.

R-D. Q. 193. Has such question been asked of you recently?

233 A. Yes; I suppose that it has probably been asked of me once or twice in the last month. Not very often lately.

R-D. Q. 194. What do you mean by "not very often lately"?

A. I mean that it used to be more frequently asked than it has in the last year.

R-D. Q. 195. Did you ever give any instructions to dealers as to what they should say with respect to the origin of the name "Remington-Sholes" when they were making sales of such machine?

234 Complainant's counsel objects to the question as immaterial.

A. Nothing only to refer them to the printed page in the catalogue in regard to the name.

R-D. Q. 196. Was it your practice to do this?

A. Yes, sir.

R-D. Q. 197. It is a common practice, is it not, for salesmen of one typewriter manufacturer to pass directly to the employ of another typewriter manufacturer?

Objected to as immaterial, irrelevant and incompetent.

A. It is.

R-D. Q. 198. In the copy of your deposition which you were just looking over while waiting for the typewriter operator to resume, I notice that a change has been made in the answer to X-Q. 80. Please state by whom this change was made and how the answer was given by you, if you now recall. 235

A. I made the change myself. My answer was "Remington-Sholes Company" or "Rem-Sho typewriter." In my previous answers regarding names on the signs I always say "Remington-Sholes Company" or "Rem-Sho Typewriter," and in no part of my deposition have I referred to it as the Remington-Sholes typewriter. I will take my solemn oath that I didn't say "Remington-Sholes typewriter." I wish to make the same correction to my answer to X-Q. 83. 236

*Re-Cross Examination by Mr. Donnelly.*

R-X Q. 199. Please state whether it is not a fact that the term or name "Rem-Sho" is an abbreviation of the name "Remington-Sholes"?

A. I take it that it is.

I wish also to call attention of the court to X-Q. 137, in which the name "Remington" was left out by the stenographer and afterwards inserted by me.

HAMLIN E. HATCH. 237

J. FRANKLYN HOBBS, a witness of lawful age, being first duly cautioned and sworn, and called on behalf of defendant, testified as follows:

Q. 1. Please state your name, age, residence and occupation.

A. My name is J. Franklyn Hobbs; age, thirty years; I am residing in Chicago; and occupation, manager of the Chicago branch of the Remington-Sholes Company.

238 Q. 2. How long have you been connected as manager of the Chicago branch with the Remington-Sholes Company?

A. Since January 1st, 1899.

Q. 3. Where was the Chicago salesroom of the Remington-Sholes Company located at the time you entered its employ?

A. The second floor of the Champlain Building, 126 State street, at the northwest corner of State and Madison.

Q. 4. State what signs, if any, are used in the office
239 or salesroom of the Remington-Sholes Company at the corner of State and Madison streets, Chicago.

A. We had cardboard signs similar to the one I see there on the wall of the office. (The witness points to "Defendant's Exhibit Rem-Sho Paste Board Sign"). The word "Rem-Sho" appeared on each of two windows in gold leaf and the words "Remington-Sholes Company," "Typewriters and Supplies" were on the third window in gold leaf.

Q. 5. In what respect, if at all, did the cardboard signs to which you have just referred differ from "Defendant's Exhibit Rem-Sho Paste Board Sign"?

240 A. They were identically the same, so far as I can see.

Q. 6. State how long the signs were exhibited at the office or salesroom of the Remington-Sholes Company in Chicago.

A. They were there when I took charge. The signs on the window in gold leaf have been removed, the signs on the cardboard have been removed to the present office. They were at the salesrooms at 126 State street as long as we occupied the rooms.

Q. 7. Were any catalogues or any other advertising media exhibited at the salesrooms?

A. Yes, sir.

Q. 8. State what the catalogues were. 241

A. At what particular time?

Q. 9. Well, from the beginning of the month of June, 1899, until recently.

A. The regular Nos. 4 and 5 catalogue has been on exhibition since about June 1st, 1899. The catalogue that I refer to is like "Defendant's Exhibit Rem-Sho Catalogue Nos. 4 and 5."

Q. 10. What was the custom of your office with respect to the distribution of these catalogues?

A. They were mailed out to inquiring parties and were handed to all callers who were interested in the 242
machine.

Q. 11. Did you ever have any business transaction with the firm of Bartelme & Stallwood?

A. I did.

Q. 12. Where was that firm located, and when did said transaction occur?

A. They were located at 138 South Water street, Chicago, and we rented them a Rem-Sho typewriter about June 13, 1899.

Q. 13. At the time that you rented the Rem-Sho typewriter to Bartelme & Stallwood, did you present to them any receipt? 243

A. The receipt went with the machine by the wagon.

Q. 14. Can you produce the receipt?

A. I have it here.

The receipt produced by the witness is offered in evidence and the same is marked "Defendant's Exhibit Bartelme & Stallwood Receipt."

Q. 15. Were any other receipts obtained by you from Bartelme & Stallwood with respect to the typewriting machine rented to them, and, if so, state under what circumstances?

A. The machine was exchanged for another on Oc-

244 tober 25, 1899, and a new receipt taken under the same circumstances as the first one.

Q. 16. Can you produce the new receipt to which you have just referred?

A. That is the last receipt received.

The receipt produced by the witness is offered in evidence, and the same is marked "Defendant's Exhibit Bartelme & Stallwood Receipt for Second Machine."

Q. 17. Did you present any bills to Bartelme & Stallwood for the rental of these Rem-Sho typewriters?

245 A. Monthly bills were mailed to them during the time they had the machines.

Q. 18. Were all these bills upon the same printed bill heading as the bill-head I now show you?

A. They were.

Q. 19. State, if you know, what this paper that I have just shown you is.

A. It is a bill-head of the Remington-Sholes Company. This is a carbon copy of a bill to Bartelme & Stallwood for the rental of a Rem-Sho typewriter.

The bill-head is offered in evidence and marked

246 "Defendant's Exhibit Sample Bartelme & Stallwood Rental Bill."

Q. 20. State, if you know, how many of these rental bills were sent to Bartelme & Stallwood.

A. Four or five.

Q. 21. Did you ever have any correspondence with Bartelme & Stallwood while acting as manager of the Chicago office of the Remington-Sholes Company?

A. I had a letter from them on October 17, 1899, asking for the ribbon to be replaced on the machine.

Q. 22. Can you produce such letter?

A. That is the letter.

The letter produced by the witness is offered in 247
evidence, and the same is marked "Defendant's Exhibit Bartelme & Stallwood Letter, October 17, 1899."

Q. 23. Was this letter received from Bartelme & Stallwood in the usual course of mail at the office of the Remington-Sholes Company?

A. It was.

Q. 24. Was it answered?

A. It was answered by sending a messenger with the ribbon.

Q. 25. And it was after this letter was received from 248
Bartelme & Stallwood that the second Rem-Sho machine was rented by them?

A. About a week, yes, sir.

Q. 26. State what name, if any, was upon the machines; I mean the typewriting machines furnished to Bartelme & Stallwood.

A. The first machine bore a name-plate of "The Remington-Sholes Company, Mfrs., Chicago," and the last one bore this same name-plate and the words "Rem-Sho No. 4" stencilled in the paper table.

Q. 27. State, if you know, what is the commonly ac-
cepted meaning of the word "standard," as the same is 249
used in typewriter's parlance.

Complainat's counsel objects to the question as immaterial and irrelevant, and also that it is not competent or proper for the witness to give an opinion on the subject inquired about in the question, as the witness has not been shown qualified to give an opinion of the subject inquired about.

A. It is ordinarily taken to mean a high-grade typewriter selling at $100, or thereabouts.

Q. 28. In what way have you acquired your under-

250 standing of this meaning of the word "standard," as applied to typewriters?

Same objection as last.

A. By handling typewriters and dealing with typewriter men and typewriter users for a number of years.

Q. 29. Have you ever seen the word used in printed matter in connection with typewriters?

Complainant's counsel objects to the question as immaterial and irrelevant, and as calling for secondary evidence, not the best evidence.

A. I have, a great many times.

251 Q. 30. Can you produce any such printed matter?

A. I can.

Q. 31. Will you do so?

Complainant's counsel objects to the question, because it calls for evidence which is irrelevant and immaterial, and has nothing to do with the issues in this case, and also on the ground that it calls for hearsay evidence and the statements of persons and concerns who are not parties to this suit, or interested in the event of this action.

A. I will, and do. I produce first the ordinary let-
252 ter-head of the United Typewriter & Supplies Company used in their Chicago office.

Q. 32. What do you find upon that letter-head bearing upon the meaning of the word "standard"?

Same objection, also that the letter produced is the best and only competent evidence of what it shows or says.

A. The words "Dealers in Standard Typewriters and Supplies."

Q. 33. Can you produce any further printed matter bearing upon this subject; and if so, please do so?

Same objection as to those heretofore made con-

cerning the evidence now being offered as regards 253
the word "standard," and it is understood and agreed between counsel that this objection shall apply to all testimony hereafter given by this witness relating to that subject, without repetition.

A. I produce next the ordinary letter-head used until recently by the United Typewriter & Supplies Company at their Omaha office, also a similar letter-head of the same company used in their Milwaukee office, and still another letter-head of the same company used at one time in their Cleveland office. I produce further a business card similar to those used by myself when in the 254
employ of the United Typewriter & Supplies Company in their office at Chicago. Also another business card like those in use by the United Typewriter & Supplies Company at their Chicago office during 1895.

Q. 34. State what you find in this material that you have produced bearing upon the meaning of the word "standard"?

A. I find the names of the Densmore, Yost and Caligraph typewriters associated with the words "Standard Typewriters."

Q. 35. Where did you procure the letter-head referred to in your answer to Q. 29, and where did you 255
procure the letter-heads and cards referred to in your answer to Q. 33?

A. The first letter-head was handed me by the manager of the United Typewriters & Supplies Company, December 7, 1896. The other letter-heads were received by me through the mails. The cards were furnished me by the Company.

Q. 36. Were you ever in the employ of the United Typewriter & Supplies Company?

A. Yes, sir; for a number of years.

Q. 37. What kind of letter-heads were used by said

256 company and by you while with said company while you were in its employ?

A. Letter-heads which were practically duplicates of those produced by me.

Q. 38. How did they compare as to the use of the word "standard"?

A. I believe the word "standard" appeared on all of our letter-heads, as it is on those.

Q. 39. Are you familiar with the signature of either of the parties appearing below the typewritten matter upon said letter-heads?

257 A. I am familiar with two of them—those of W. G. Skeel, and Jay C. V. Hamil.

Q. 40. State whether or not those are the genuine signatures of W. G. Skeel and Jay C. V. Hamil?

A. They are.

Q. 41. When were the letter-heads beneath which these signatures appear received by you?

A. About the time of their individual dates. The Skeel letter was received by me about September 20, 1894, and the Hamil letter was received by me December 7, 1896.

Q. 42. From whom did you receive the business card
258 referred to in your answer to Q. 33?

A. The lithograph card was furnished from the New York office of the United Typewriter & Supplies Company to its Chicago branch for the use of the salesmen, and the printed card I ordered printed under the instructions of the manager of the said company, during the early part of 1897.

The letter sheet or head bearing the signature of Jay C. V. Hamil is offered in evidence, and the same is marked "Defendant's Exhibit United Typewriter and Supplies Company Chicago Letter-Head."

The three other letter-heads referred to by the witness in his answer to Q. 33 are offerd in evidence, and the same are marked "Defendant's Exhibit United Typewriter & Supplies Company Omaha, Milwaukee and Cleveland Letter-Heads." 259

The cards produced by the witness in his answer to Q. 33 are offered in evidence, and marked "Defendant's Exhibit United Typewriter & Supplies Co. Chicago Cards."

Q. 43. I call your attention to "Defendant's Exhibit, pages 9 and 92 of Webster Co. Catalogue," and ask you to state whether you have ever seen this catalogue before, and if so, what you know concerning it? 260

A. It is the regular typewriter catalogue given out by the F. S. Webster Company from its Chicago office.

Q. 44. Did you ever obtain a copy of said catalogue from the office of the F. S. Webster Company, and if so, state when?

A. I have obtained several, and obtained one to-day.

It is admitted that the catalogue produced by witness to-day by the F. S. Webster Company is identical with the catalogue containing "Defendant's Exhibit pages 9 and 92 Webster Co. Catalogue." 261

*Cross-Examination by Mr. Donnelly.*

X-Q. 45. When did you first enter into the service of the Remington-Sholes Company?

A. January 3, 1899.

X-Q. 46. Was that the first service you had ever done for the Remington-Sholes Company, or had you ever been in its employ prior to that time?

A. I had not.

X-Q. 47. When did you first engage in the manufacture or sale of typewriting machines?

A. I could not give the date, but about 1889.

262 X-Q. 48. With what concern did you engage, either in the manufacture or sale of typewriting machines?

A. With A. C. Jennings and the K. M. B. Supply Company, both of Des Moines, Iowa.

X-Q. 49. What was the character of the employment; how long did it continue, and what typewriting machine or machines, if any, did the concern with whom you were engaged either manufacture or sell?

A. We sold the Caligraph typewriter, and I was employed as salesman and later as manager. I object to giving dates, on account of my knowledge of the blacklisting method of typewriter companies.

263 X-Q. 50. What company or companies do you refer to in your last answer?

A. I refer to a combination of companies known as the Union Typewriter Company.

X-Q. 51. Do you refer to the complainant in this case, Wyckoff, Seamans & Benedict, in your previous answers?

A. I refer to the concern named in my last answer, which is reputed to own Wyckoff, Seamans & Benedict.

X-Q. 52. Your statement or answers to X-Qs. 49 and 50 are intended to cover and include and refer to

264 the complainant in this case; is that correct?

A. Not necessarily.

X-Q. 53. What do you mean by that answer?

A. Ask me a direct question and I can give you an answer.

X-Q. 54. Please explain what you mean in your answer to X-Q. 52, and the Examiner is requested to read the question to the witness.

Question read.

A. My answer refers to the Union Typewriter Company as a whole.

X-Q. 55. What do you mean by "the Union Typewriter Company as a whole"? 265

A. The Union Typewriter Company is reputed to own a number of individual typewriter companies. I do not know how many.

X-Q. 56. What personal knowledge have you got on that subject?

A. I know something of the affairs of the company.

X-Q. 57. Have you ever been connected with the Union Typewriter Company?

A. I have been connected with the United Typewriter & Supplies Company, which receives orders from officers of the Union Typewriter Company and from members of the firm known as Wyckoff, Seamans & Benedict. 266

X-Q. 58. You have some feeling of hostility, have you not, to Wyckoff, Seamans & Benedict or to persons whom you say are connected with that concern?

A. None whatever. I left the company on a friendly footing.

X-Q. 59. What company did you leave on a friendly footing?

A. The United Typewriter & Supplies Company.

X-Q. 60. Why then do you drag in the United Typewriter & Supplies Company and its business into this case as you have done and make statements concerning its business which you learned when you were an employe of it? 267

A. Because the counsel forced the answers.

X-Q. 61. I now repeat X-Q. 49, and I request you to answer said question fully.

A. I stated my reasons for declining to answer the question. It does not concern this case in any way.

X-Q. 62. Do you now refuse to answer said question as requested in my last preceding cross-question?

268 A. I answered the question fully, excepting dates, and the time was about one year or a year and a half.

X-Q. 63. Where next did you engage in the sale of typewriting machines, and for whom, and for how long a period of time?

A. With George H. Smith & Company, of Cedar Rapids, Iowa, and the employment continued until the fall of 1892.

X-Q. 64. What typewriting machine, if any, did you sell there?

A. The Densmore.

269 X-Q. 65. Where next did you engage in the sale of typewriting machines, for whom and for how long a period of time?

A. For W. A. Hardy & Company, of Denver, Colorado, selling the Densmore; J. S. Stahl & Company, of Denver, selling the Caligraph, and George H. Smith & Company, in its branch house at Des Moines, Iowa, selling the Densmore.

X-Q. 66. Where next did you engage in the sale of typewriting machines, for whom and for how long a period of time?

270 A. With the Densmore Typewriter Company, at Chicago, until that concern was absorbed by the United Typewriter & Supplies Company, and was then with the United Typewriter & Supplies Company until January 1st, 1899.

X-Q. 67. What are the character of your duties as manager of the Remington-Sholes branch office in the City of Chicago, and what have they been during the time you have been so employed?

A. The regular office duties of handling correspondence, directing salesmen and repair men, and selling machines.

X-Q. 68. On what floor of the building corner of State and Madison streets has the office of the Reming

ton-Sholes Company in the City of Chicago, of which you have been the manager, been located? 271

A. On the second floor.

X-Q. 69. Since you have been connected with the Remington-Sholes Company as manager, has it been any part of your duty to advertise the business of the company or to look after that branch of the business; I mean advertise in magazines or newspapers or other publications?

A. I have nothing to do with the advertising done by the company.

X-Q. 70. When did you first have knowledge or learn that there was a typewriting machine in the market called the Remington-Sholes or Rem-Sho typewriter? 272

A. I heard of the machine late in 1894, but did not see it on the market until 1895.

X-Q. 71. What was the machine then called, or how was it designated?

A. It was called the "Remington-Sholes."

X-Q. 72. And for how long a period of time did that designation continue?

A. Almost as soon as I heard of the machine, I heard it called the "Rem-Sho," and I believe it went by that name for a couple of years. 273

X-Q. 73. And you understood, of course, that the term "Rem." was an abbreviation of "Remington"?

A. I did.

X-Q. 74. And is it your understanding that the name "Rem-Sho" is an abbreviation of the name "Remington-Sholes"?

A. I should call it rather a nick-name or substitution.

X-Q. 75. Wouldn't you call it, and wouldn't it be correct to say that it is, an abbreviation of the name "Remington-Sholes"?

A. I should judge so.

274 X-Q. 76. How long have you been acquainted with the so-called Remington typewriter?

A. I think about fifteen years.

X-Q. 77. That is to say, since about 1885?

A. About that time.

X-Q. 78. Has that machine been largely in use in the localities where you have sold typewriting machines or where you have lived during that period?

A. In most localities.

X-Q. 79. It was a well-known typewriting machine in the market before you ever heard of the Remington-Sholes or Rem-Sho machine, was it not?

275 A. It was.

X-Q. 80. Have you ever heard the manufacturers and vendors of so-called Remington machine referred to as the Remington people or the Remington Typewriter Company?

A. I have often heard them called the Remington people, and occasionally the Remington Typewriter Company.

X-Q. 81. Have you ever seen any letters or communications which were intended for Wyckoff, Seamans & Benedict that were addressed to the Remington Com-

276 pany, or to the Remington Typewriter Company, or that in substance and effect?

A. I think not.

X-Q. 82. Since you have been manager of the Remington-Sholes office in the City of Chicago, have any letters or communications come to your office which were intended for the Chicago office of Wyckoff, Seamans & Benedict?

A. No, sir.

And thereupon adjournment was taken until Friday, May 11th, 1900, at 10 o'clock A. M.

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Friday, May 11th, 1900, 10 o'clock A. M. Met pursuant to adjournment. Present as before. Cross-examination of witness Hobbs resumed.

X-Q. 83. Since you have been in charge as manager of the Chicago office of the Remington-Sholes Company, has the mail which was intended for your company come to your office or has it or does it go to the office of the company at its factory?

A. Mail addressed to my office comes direct, and mail addressed to the Remington-Sholes Company, Chicago, goes to the factory, as a rule.

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X-Q. 84. Where would mail matter go which was addressed simply to the company at Chicago, and without designation of the city office, of which you have charge?

A. It would go to the factory, but by accident an occasional letter comes to the city office which is so addressed.

X-Q. 85. Since you have been engaged in the service of the Remington-Sholes Company, has any mail matter come to your office addressed to the Remington Company or Remington Typewriter Company?

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A. I have answered that question before in the negative, but I have a vague recollection of having received one letter about a year ago, or of having seen one which was received by the factory, I cannot tell which, which I believe was intended for the Remington people.

X-Q. 86. And by "Remington people" I presume you mean Wyckoff, Seamans & Benedict?

A. Yes, sir.

X-Q. 87. Did you personally present these bills for rental of the Rem-Sho typewriter, so called, to Bartelme & Stallwood, or were they sent by mail or messenger?

A. They were all sent by mail in the usual way.

X-Q. 88. Did you or not personally rent these so-

280 called Rem-Sho machines to Bartelme & Stallwood, or did somebody else who was in the employ of the Remington-Sholes Company perform that service?

A. No one rented the machines. An order was sent or left at my office for a Rem-Sho machine to be delivered to Bartelme & Stallwood on rental.

X-Q. 89. These machines were in fact rented, were they not, and such hiring or rental was predicated upon said order; is that correct?

A. They were really rented when the rental receipt was signed.

281 X-Q. 90. Where was the rental receipt signed, if you know?

A. I believe it was signed at the place of business of Bartelme & Stallwood on South Water street.

X-Q. 91. Were you present at that time?

A. I was not.

X-Q. 92. I show you "Defendant's Exhibit Bartelme & Stallwood Letter October 17, 1899," and ask you to say whether or no the name "Bartelme & Stallwood" subscribed to said exhibit letter is in script or typewritten?

A. It is typewritten.

282 X-Q. 93. You have testified concerning the signs used by the Remington-Sholes Company in and about the Chicago salesoffice, and I ask you to state whether or no the name "Remington" always appears upon said signs?

A. The names "Remington-Sholes" and "Rem-Sho" were used.

X-Q. 94. Was the name "Remington-Sholes" always used on signs in connection with the name "Rem-Sho"?

A. They were used together and separately.

X-Q. 95. In the Chicago office the name "Rem-Sho," as I understand your testimony, appeared upon two of

the windows of the office located on the second floor of the building; is that correct? 283

A. Yes, sir.

X-Q. 96. Is it or not a fact that on the third window of the office the name "Remington-Sholes" was exhibited?

A. The name "Remington-Sholes Company" was on the third window.

X-Q. 97. Was there any other place about the office of the Remington-Sholes Company where the so-called name "Rem-Sho" appeared alone or disassociated from the name "Remington-Sholes," except upon the office windows? 284

A. No, sir.

X-Q. 98. Is it a fact, so far as your observation extends, that the name "Remington-Sholes" always appears upon the machines of the Remington-Sholes Company and in its catalogues which are circulated for the purpose of advertising this machine?

A. I believe the term "Remington-Sholes Company" always appears.

X-Q. 99. As I understand your testimony, "Defendant's Exhibit Rem-Sho Catalogue No. 4 and 5" was first used about June, 1899; is my understanding correct? 285

A. It was first used by me about that time.

X-Q. 100. Did you use any catalogue previous to that time, and if so, how did it differ from the catalogue advertising Rem-Sho machines 4 and 5?

A. I used the catalogue showing the No. 2 and 3 machines earlier in the year.

X-Q. 101. I call your attention to "Complainant's Exhibit Rem-Sho Booklet," and ask you to examine the same and to say whether or no the catalogues used by you in the Remington-Sholes Chicago office were like said exhibit.

286 A. They were similar, and may or may not have been identically the same, as there were several editions, I understand, of this style of catalogue.

X-Q. 102. Can you say whether or not "Complainant's Exhibit Rem-Sho Booklet" was used or circulated by you while you were in charge of the Remington-Sholes Company Chicago office prior to June, 1899?

A. I could not positively state.

X-Q. 103. What is your best knowledge and recollection in the premises?

A. I used No. 2 and 3 catalogues, but as this exhibit
287 is not identified by any serial mark, I could not identify it.

X-Q. 104. Please look at said exhibit and examine the same carefully, and say whether or not you ever before saw a catalogue of the Remington-Sholes Company which was used or circulated by it like said exhibit.

A. I believe I have seen a catalogue identical with this one, excepting the rubber stamp marks on the same, but I do not know that such catalogues were distributed.

X-Q. 105. Do you not make it a practice to examine all catalogues issued from time to time by the Remington-Sholes Company, and has not such been your prac-
288 tice since you have been in the employ of that Company?

A. I always examine the catalogues.

X-Q. 106. Do you always know what they contain? I mean the printed matter, cuts, etc.

A. Not verbatim, but I get the general ideas.

X-Q. 107. Have you ever distributed any catalogues or seen any catalogues, published and circulated by the Remington-Sholes Company, which contained on the back side of the title page these words: "The only machine now made by a Remington"?

A. I have seen and distributed catalogues containing those words.

X-Q. 108. To what extent have you distributed such catalogues, and to whom? 289

A. My office has used but few of them, and I believe they were nearly all used in the City of Chicago.

X-Q. 109. Do you know whether any of these catalogues have been used in other cities?

A. I do not know.

X-Q. 110. In the course of your selling typewriting machines in the Chicago office of the Remington-Sholes Company, have you or not made a statement in substance or effect like that contained in said exhibit catalogue?

A. I have never used the words printed in said exhibit, but I have on one or two occasions used a similar statement. 290

X-Q. 111. Have you used that statement frequently?

A. Probably less than five times; I only remember one instance.

X-Q. 112. Has the inquiry sometimes been made of you what connection, if any, the Remington-Sholes Company, or the Rem-Sho typewriter, had with the so-called Remington typewriter or the Remington people?

A. That question has never been asked me, but one party a few months since said "There is no connection between your company and the Remington Standard Typewriter Company, is there"? 291

X-Q. 113. Who was that party?

A. It was a stenographer. I have forgotten who.

X-Q. 114. To what extent has the so-called Rem-Sho machine been sold in the City of Chicago since you have been in charge of the office of the company; I mean has it been largely sold or otherwise?

A. The sales have been reasonably large.

X-Q. 115. Have you made any sales to customers who have used the Remington typewriter, so called, or have you made sales which have in many instances displaced that machine?

292 Defendant's counsel objects to the question for the reason that it is immaterial and irrelevant and not proper cross-examination.

A. I have made a great many such sales.

X-Q. 116. From your knowledge and experience and observation in the sale of typewriters and the typewriter business, do you or not consider that it has been or is of any advantage to the Remington-Sholes Company to use the name "Remington" in its corporate name?

Same objection as last.

A. I do not believe it is of much benefit or advan-
293 tage to our company.

X-Q. 117. Then you think, do you not, that it would be just as well for the company to dispense with the name "Remington" and use the name "Sholes" alone, or some other name; is that your view of the matter?

The question is objected to for the reasons last stated, and for the further reason that it calls for a mere opinion or conclusion of the witness, and is not competent.

A. A change of name would undoubtedly injure the company's business, as some customers would lose sight
294 of them in the change.

X-Q. 118. Do you think that if the company had originally selected the name "Sholes," and been designated by the name "Sholes Typewriter Company," it could have sold its product just as well and as advantageously without the use of the name "Remington"?

Same objection as last. Defendant's counsel desires to state on the record that in order to expedite this deposition he has abstained from interposing objections and has allowed complainant's counsel to pass beyond the bounds of proper cross-examination and to make the witness his own, but

counsel protests against this line of cross-examination and its indefinite continuance. 295

A. That is mere conjecture, but I believe it would.

X-Q. 119. I notice that the operator has failed to record your answer to X-Q. 86, which referred back to your answer to X-Q. 85. I now repeat X-Q. 86 and ask you to give your answer thereto in order that the operator may record the same upon the record.

A. I referred to Wyckoff, Seamans & Benedict, called by themselves and their employés "the Remington people."

Complainant's counsel admits upon the record that the letter marked "Defendant's Exhibit Bartelme & Stallwood Letter October 17, 1899," was received at the sales office of the Remington-Sholes Company, corner of Madison and State streets, Chicago, Illinois, from said firm at the date of said letter. 296

*Re-Direct Examination by Mr. Fisher.*

R-D. Q. 120. What has been the practice of the office of which you are manager in regard to the distribution of catalogues relating to the Rem-Sho typewriter since you have been in charge of said office? 297

A. We mail them to prospective purchasers, hand them to office callers who appear interested in the machine, and our salesmen leave them with prospective buyers.

R-D. Q. 121. You have stated, I believe, in the course of your cross-examination, that you remember one instance only in which you have used the expression "the only machine now made by a Remington." Please state whether you ever used such statement as an isolated statement, or in what connection you did use it.

A. I did not use those words at all, but called the

298 parties' attention to the connection of Mr. Franklin Remington with our company in refuting the statement made by a salesman for Wyckoff, Seamans & Benedict that our machine was a counterfeit.

J. F. HOBBS.

H. HOCHKLASSEN, a witness of lawful age, being first duly cautioned and sworn, and called on behalf of defendant, testified as follows:

Q. 1. State your name, age, residence and occupation.

299 A. H. Hochklassen; age, forty-five years; residence, 119 North Oakley avenue, Chicago; and occupation, present superintendent of the Remington-Sholes Company.

Q. 2. When did you enter the employ of the Remington-Sholes Company?

A. In 1897. I do not remember whether it was the spring or summer of the year.

Q. 3. In whose employ were you immediately before you entered the employ of the Remington-Sholes Company?

A. In the employ of Mr. C. N. Fay.

300 Q. 4. How long were you in Mr. Fay's employ?

A. I think it was from about five to six months.

Q. 5. By whom were you employed immediately before you entered the employ of Mr. C. N. Fay?

A. By the Remington-Sholes Typewriter Company.

Q. 6. State when you entered the employ of the Remington-Sholes Typewriter Company, and how long you remained with said company.

A. I started to work for the Remington-Sholes Typewriter Company I think in 1894; I think it was in March, and I remained with that company until Mr. C. N. Fay took that company and then I worked for

him. That was in 1896 or 1897. It was in the fall of 301
1896 until the spring of 1897, when the new company was organized.

Q. 7. What was the character of your duties while you were in the employ of the old Remington-Sholes Typewriter Company?

A. Part of that time I was foreman there, attending to the shipping and packing of the machines; also I attended to the workmen there to see if their work came out proper, so as the general foreman has got to do.

Q. 8. Please state whether any uniform style of marking the machines was employed during the time 302
that you worked for the Remington-Sholes Typewriter Company.

A. We had a name-plate on the machine itself which says "Remington-Sholes Chicago." The packing-box, it said on the outside "Remington-Sholes Typewriter, Chicago, Ills., U. S. A."

Q. 9. Can you produce a specimen name-plate showing how the machines were marked by the Remington-Sholes Typewriter Company while you were in its employ? If so, please produce it.

A. Yes, I can; here it is.

The name-plate produced by the witness is offered 303
in evidence, and the same is marked "Defendant's Exhibit Remington-Sholes Typewriter Company Name-Plate."

Q. 10. State whether or not all the machines sent out by the Remington-Sholes Typewriter Company bore this name-plate.

A. Yes, sir; they did. From the first machine up to 1897.

Q. 11. State what kind of name-plate was employed on the machines that were sent out from the factory during the time Mr. Fay controlled the business; I mean

304 from the time he bought out the old company until the new company was organized.

A. That same name-plate was used, as I said before, from the first machine until the new company in 1897 was formed.

Q. 12. State what name-plate was used on all the machines shipped out from the factory from the time the new company, I mean the Remington-Sholes Company, was organized and up to the present time.

A. It said "Remington-Sholes Company Mfrs. Chicago." It was the same plate as shown by "Defendant's Exhibit Remington-Sholes Company Name-Plate."

305 Q. 13. State how the packing-boxes or shipping-cases were marked during the time Mr. Fay had the business, and up to the organization of the new company.

A. They were marked during the time Mr. Fay had it the same as before.

Q. 14. I show you a sheet of pasteboard with stencil printing thereon, and ask you to state who made the same.

A. I did.

Q. 15. From what stencil did you make this print?

A. I made it from the original one that we marked
306 the packing-boxes with in which we shipped machines in 1895.

The pasteboard sheet is offered in evidence, and the same is marked "Defendant's Exhibit Remington-Sholes Old Stencil."

Q. 16. How long was this stencil used for marking the packing-boxes?

A. It was used up to the time the new company was formed in 1897.

Q. 17. How have the packing-boxes been marked since the formation of the new company?

A. We went to work and cut the top off of the old

stencil. I mean we cut of the top line. Then I had a 307
new stencil made and it read "Rem-Sho." I think the letters were about three inches high, and they went right above the top of the word "Typewriter." Sometimes we used that stencil "Rem-Sho" on the top of the packing-box, and then we take the other stencil with the words "Typewriter, Chicago, Ill., U. S. A." and put it below the word "Rem-Sho" in some places, and in other cases on the side of the box.

Q. 18. Do you know Mr. Franklin Remington, and if so, how long have you known him?

A. I have known Mr. Franklin Remington since the fall of 1893. 308

Q. 19. State, if you know, what Mr. Remington's connections were with the old Remington-Sholes Typewriter Company and the character of his duties during the existence of such company.

A. He was general manager, and he has often assisted me, at first packing machines, and he was round about the factory.

Q. 20. What were his duties in the factory?

A. He gave me his orders to help put up machines, issued orders for the material, and at the same time he kind of superintended the making of the tools. He has 309
made the first improvement, that is to say, the fastening of the button on the key-lever, that is, the inserting of the key-lever in the button. He was general manager and I followed up his orders that he gave me in the construction of the machine.

Q. 21. What were Mr. Remington's duties during the time that Mr. Fay had the business, and what have been his duties since the new company was organized?

A. During the time Mr. C. N. Fay had the business he was general manager and Mr. C. N. Fay was superintendent.

310 Q. 22. What have been Mr. Remington's duties since the organization of the new company?

A. He was general manager.

Q. 23. What marks, if any, have been placed upon the paper table of any of the machines manufactured by the Remington-Sholes Company?

A. The paper table we put a name, "Rem-Sho," No. 2, 3, 4 and 5. This name was cut through the metal of the table.

Q. 24. When was this manner of marking the table adopted?

A. That was started in 1898; in the fall; October.

311 Q. 25. Can you produce a paper table such as have been used upon the Rem-Sho machines, and marked as you have indicated?

A. Yes; here it is.

The paper table produced by the witness is offered in evidence and marked "Defendant's Exhibit Rem-Sho Paper Table."

Q. 26. You may state whether there has been any change in the design of the frame of the typewriting machine since the first machine was placed upon the market; I mean, of course, to the machine manufactured by

312 the Remington-Sholes Company and its predecessors.

A. There was no change made in the frame; present frame is the same frame to-day and made from the same patterns that we used in 1895.

*Cross-Examination by Mr. Donnelly.*

X-Q. 27. You have stated that you have been in the employ of the Remington-Sholes Company since the spring or summer of 1897; please state in what capacity you have worked, and generally what your duties have been.

A. I have been superintendent. I lay out the work,

see that a man performs it properly, design new tools when necessary; also have charge of the shipping of everything that goes out; issuing way-bills; signing them. 313

X-Q. 28. Well, your duties as superintendent are to see that the machines are properly constructed and all parts are properly made by the workmen, and generally, to look after the workmen and everything pertaining to the mechanism of the machine and the manufacture thereof in and about the factory of the Remington-Sholes Company?

A. Yes, sir.

X-Q. 29. If any changes or additions or improvements are made in the machines from time to time I presume they are made under your supervision and direction; is that correct? 314

A. Yes, sir.

X-Q. 30. Who is the president of the Remington-Sholes Company, and who has been such since the company was organized in 1897?

A. Mr. C. N. Fay is president.

X-Q. 31. What have been Mr. C. N. Fay's duties, and what has he done in and about the factory of the Remington-Sholes Company since their organization in 1897? 315

A. I receive my orders from him what to do about the factory in the manufacture of the machines. I have got to report to him about the performance of the duties I perform in the factory.

X-Q. 32. Mr. Fay, as president, I suppose, is in supreme control of the factory and the business; is that correct?

A. It is.

Q. 33. During the time that Mr. Fay had the business, that is, between the time when the old company

316 gave up the business and a new one was formed, who was superintendent of the business of manufacturing the Remington-Sholes typewriter?

A. Mr. Franklin Remington was there and Mr. C. N. Fay; both was there; both had charge. Mr. C. N. Fay was at a desk at one side of the office and Mr. Remington at a desk on the other, and I myself got my orders from first one and then the other. I got them mostly through Mr. Franklin Remington.

X-Q. 34. Who was then superintendent of the factory? Were you?

317 A. Mr. Fay was superintendent of the factory. That was what I took from notice, because a change took place at that time, when Mr. Zalmon Sholes went down town to take charge of the office.

X-Q. 35. Who, if anybody, was the superintendent of the Remington-Sholes Typewriter Company from the time you went there until Mr. Fay took the business?

A. Mr. Zalmon G. Sholes was superintendent from 1894 up to the time he went down town.

X-Q. 36. What was your business, or what were your duties, during the existence and the carrying on of the business by the Remington-Sholes Typewriter Com-

318 pany?

A. I was constructing tools, and then was experimenting for the improvement of the machine with the superintendent, Zalmon G. Sholes.

X-Q. 37. Then, if I understand your testimony, you aided and assisted Mr. Zalmon G. Sholes in developing and perfecting the first Remington-Sholes machine which was put upon the market?

A. Yes, sir.

X-Q. 38. You, I take it, were the practical mechanic to whom they always looked to see that proper tools were constructed and the machines put into proper mechanical condition?

A. Yes, under direction of my superiors. 319

X-Q. 39. Who was the president of the Remington-Sholes Typewriter Company, which was the company that preceded the present one?

A. Mr. C. N. Fay.

X-Q. 40. And so far as you know Mr. C. N. Fay was the president of the Remington-Sholes Typewriter Company during its existence and until it stopped manufacturing typewriting machines; is that correct?

A. Yes, sir.

X-Q. 41. If I understand your testimony, during the time that Mr. Fay had the business the same identical machine was made, and it was marked the same as 320
it had been made by the Remington-Sholes Typewriter Company; is that correct?

A. It is.

X-Q. 42. Since the Remington-Sholes Company was formed has Mr. Franklin Remington been absent traveling about the country, and also traveling in Europe?

A. Yes, sir.

X-Q. 43. Since the Remington-Sholes Company was organized has Mr. Franklin Remington spent more or less of his time in looking after the outside business or agencies of the company, as you understand? 321

The question is objected to as immaterial, irrelevant and not proper cross-examination, and for the further reason that it has not been shown that this witness is qualified or in the line of his duty has occasion to know about Mr. Remington's work outside of the factory.

A. I will say that I could not say whether Mr. Franklin Remington was doing in his absence.

X-Q. 44. But you do know that he has been absent from the factory, do you not?

322 A. I do know that he was absent from the factory.

X-Q. 45. And was you informed or did you learn that he was out looking after the outside business of the company either in this country or in Europe?

Same objection as above.

A. I know that he wasn't there, and that he went to Europe; that is all I know.

X-Q. 46. Has Mr. C. N. Fay made any improvements in the No. 2, 3, 4 or 5 machines sold by the Remington-Sholes Company?

323 The question is objected to as immaterial, irrelevant and not proper cross-examination.

A. Yes, I suppose so; we all know that.

X-Q. 47. Will you kindly state where the name-plate was located on the Remington-Sholes typewriter when it was manufactured and sold by the Remington-Sholes Typewriter Company and by Mr. Fay?

A. Yes; it was placed on the cross-bar of the frame, back of the bank of keys.

X-Q. 48. Where else, if at all, was the name "Remington-Sholes" placed on that machine?

A. Right on that cross-bar.

324 X-Q. 49. Was that the only place where the name "Remington-Sholes" appeared on the machine?

A. That was the only place; yes.

X-Q. 50. When, according to your best knowledge and recollection, were the first Remington-Sholes typewriters shipped from the factory of the Remington-Sholes Typewriter Company?

A. That was in 1895; in the spring; I think it was in April. It might have been a little sooner or later.

X-Q. 51. State, according to your recollection, about how many machines the Remington-Sholes Typewriter

Company manufactured and shipped from its factory before Mr. Fay had the business. 325

Counsel for defendant objects to the question as immaterial, irrelevant and improper. Counsel further says that he is ready now or at such time as complainant's counsel may elect to submit to the United States Circuit Court at Chicago or to the United States Circuit Court in Vermont the question as to whether this witness shall be forced to answer this question, that can have no bearing upon the matters here at issue, and which is manifestly an improper attempt to inquire into the business of the Remington-Sholes Typewriter Company. Defendant's counsel will hold this witness subject to further cross-examination after the propriety of his answering this question is settled by the court; but unless counsel for complainant avails himself of the offer now made to submit the matter to the court, he must instruct the witness not to answer the question. 326

Complainant's counsel sees no reason for his availing himself of the offer of defendant's counsel, and declines it with thanks, and requests that the witness answer the question. 327

Defendant's counsel instructs the witness not to answer the question.

A. I decline to answer.

H. HOCHKLASSEN.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

I, Marie L. Price, a Notary Public in and for the County of Cook and State of Illinois, do hereby certify that the foregoing depositions of George A. Baldwin,

328 Hamlin E. Hatch, J. Franklyn Hobbs and H. Hochklassen were taken by and before me pursuant to stipulation, of the office of Peirce & Fisher, Montauk Block, 115 Monroe street, Chicago, Illinois, beginning at 11 o'clock on May 8th, 1900, and continuing by adjournment until May 11th, when they were completed; that said depositions were taken on the part of the defendant to be used on the hearing of a certain cause now pending in the Circuit Court of the United States for the District of Vermont, wherein Wyckoff, Seamans & Benedict is complainant and The Howe Scale Company of 1886 is defendant; that the parties to said cause were present at
329 the taking of the same, complainant by its counsel, H. D. Donnelly, Esq., and Josiah McRoberts, Esq., and defendant by its counsel, George P. Fisher, Esq., as therein appears; that before deposing the said George A. Baldwin, Hamlin E. Hatch, J. Franklyn Hobbs and H. Hochklassen were by me duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, and their depositions reduced to writing by me from their statements, and the same were duly subscribed before me by the said witnesses. And I do further certify that I am neither attorney nor of counsel
330 for any of the parties in said deposition or caption named, and am in no wise interested in the result of said cause.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 15th day of May, 1900.

MARIE L. PRICE,

[NOTARIAL SEAL.] Notary Public, Cook County, Illinois.

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UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict
*against*
The Howe Scale Company of 1886. } In Equity.

Washington, D. C., April 4, 1900.

Testimony taken in behalf of defendant in the above-entitled cause before Hugh M. Sterling, Esq., Notary Public and Special Examiner by consent and under stipulation heretofore made, and pursuant to the 67th Rule 332
as amended of the Supreme Court of the United States in Equity.

Present: Mr. H. D. Donnelly, for complainant; George P. Fisher, Jr., for defendant.

WILLIAM J. ROMIG, a witness of lawful age, being first duly cautioned and sworn, and called on behalf of defendant, testified as follows:

Q. 1. State your name, age, and occupation.

A. William J. Romig; Morristown, N. J.; advertising writer. 333

Q. 2. Were you ever in the employ of the Howe Scale Company, defendant in this cause, and if so, when?

A. I was; from February, 1898, to 1st of August of same year.

Q. 3. Where were you employed by the Howe Scale Company?

A. 508 Market street, Philadelphia.

Q. 4. What was the nature of your employment by the Howe Scale Company during the time mentioned?

A. Stenographer and salesman.

334 Q. 5. What were you employed to sell by the Howe Scale Company?

A. Remington-Sholes typewriter.

Q. 6. Was the Howe Scale Company at that time acting as sales agent for the sale of the Remington-Sholes typewriter?

A. They were.

Q. 7. State, if you know, in what manner the Howe Scale Company advertised such fact by its signs, if at all.

A. The Remington-Sholes Typewriter Co., manufacturers, Chicago, Ill. Howe Scale Co., Sales Agents.

335 Q. 8. Was the name of the typewriter given upon that sign?

A. Is was as "Rem-Sho."

Q. 9. Where were those signs exhibited?

A. In two or three places on the front of the store. Large signs; one large one on the bulk window and two or three small ones on other windows.

Q. 10. State what catalogues, if any, were used by the Howe Scale Company as a means of advertising the Rem-Sho machine during the time that you were in the employ of said company.

336 A. The typewriter catalogues furnished by the Remington-Sholes Company, stamped Howe Scale Company, sales agents.

Q. 11. Can you produce one of said catalogues?

A. Yes; here it is. This is the same as the catalogue except that the name of the Howe Scale Company is not stamped upon it.

Defendant's counsel offers in evidence the catalogue produced by the witness, and the same is marked "Defendant's Exhibit Rem-Sho Catalogue Nos. 2 and 3."

Q. 12. During the time that you were employed by

the Howe Scale Company at Philadelphia, did you ever meet a man who gave his name as James A. Hood? 337

A. I did.

Q. 13. When did you meet him?

A. Some time in July, '98. I cannot recall the date.

Q. 14. Did the man giving his name as James A. Hood give you his address, and if so, what address did he give?

A. He gave me his address as Baltimore, Md.

Q. 15. State the circumstances under which you met the party calling himself James A. Hood, and where such meeting occurred.

A. He called up the Howe Scale Company on the 'phone, asking if any one were there who could talk to him concerning typewriters; he stated that he was at the Lafayette Hotel, when I came to the 'phone, and requested me to call up and see him at once, stating that he could not get away. 338

Q. 16. Did you go to the Lafayette Hotel and meet him?

A. I did.

Q. 17. How soon did you go there after your telephone conversation with him?

A. In about fifteen minutes. 339

Q. 18. State fully what occurred at that conversation between yourself and the party representing himself as James A. Hood, of Baltimore.

A. He told me that he represented an export house in Jamaica, who were in the markets for a typewriter as a sample machine, and if sample were satisfactory further orders would follow. He stated that the parties for whom he was buying were familiar only with the Remington typewriter, but that he was dissatisfied with the treatment accorded him by the Remington Company, and wished to secure another machine to take its place, if possible a machine similar to the Remington. I ex-

340 plained to him the Remington-Sholes machine from catalogues of said machine, which I brought with me. I told him the machine was in many respects similar to the Remington, and possessed many features superior to the Remington. When asked in what particular it resembled the Remington machine and some of its characteristics, I called his attention to the universal keyboard and the shift-key, stating that Remington operators would experience no difficulty in operating the Remington-Sholes machine. There were other small matters mentioned, which I do not exactly recall. These were in regard to shipping, price, etc. He at that time stat-
341 ing that dealing with me was rather awkward from the fact that he did not know whether he was dealing with the Remington-Sholes Company or the Howe Scale Company, I informed him that he was dealing with the Howe Scale Company, and explained to him that the machine was manufactured by the Remington-Sholes Company, and that Howe Scale Company were the sale agents. When the matter of price was brought up, not being familiar with the export prices of the machine, I returned to the office at 508 Market street, to ascertain what prices I could quote him. After ascertaining this
342 price, returned to Mr. Hood, giving the price of the machine for export. He promised to favor me with an order later on, stating that he was going to New York and would send me the order there. To identify himself with an export house, he showed me a letter from Messrs. Brooks & Company, Jamaica, W. I.

Q. 19. Can you produce the letter that the party calling himself James A. Hood showed to you at the time of the conversation mentioned in your last answer?

A. Yes; here it is.

The letter produced by the witness is offered in evidence by counsel for defendant, and marked "Defendant's Exhibit Brooks & Co. Letter."

Q. 20. Did you ever have any other conversation with this party calling himself James A. Hood, besides the conversations to which you have just referred? 343

A. No.

Q. 21. You have stated that in explaining the Rem-Sho machine to Mr. Hood you used the catalogue of such machine. Was this catalogue which you showed him the same as the catalogue that has been introduced in evidence and marked "Defendant's Exhibit Rem-Sho Catalogue Nos. 2 and 3"?

A. The body of the catalogue was the same, the printed matter embodied and illustrations were the same.

Q. 22. I call your attention to page 24 of the catalogue in evidence, and ask you to state whether in the course of your conversation with Mr. Hood you called his attention to such page of the catalogue, and if so, whether you made any statements to him in connection therewith? 344

A. Mr. Hood asked me the connection between the Remington typewriter and the Remington-Sholes typewriter, or Rem-Sho, and I gave him the facts about the same as given on page 24. I do not recall having read him this page, although I did call his attention to it, as we were both in a hurry, being late in the afternoon.

Q. 23. Did you at that time give him a copy of the catalogue? 345

A. I did.

Q. 24. Did you tell Mr. Hood by whom the Remington-Sholes or Rem-Sho typewriter was manufactured?

A. I told him it was manufactured by the Remington-Sholes Company of Chicago.

Q. 25. Did you tell Mr. Hood that it was made by the former makers of the old Remington typewriter?

A. I did not.

Q. 26. What statement, if any, did you make to Mr.

346 Hood in regard to the parties who manufactured the Rem-Sho typewriter?

A. Nothing further than outlined in the catalogue to the effect that Mr. Frank Remington was connected with the concern.

Q. 27. Did you tell him who Mr. Frank Remington was?

A. I do not recall whether I did or not.

Q. 28. What did you tell him, if anything, in regard to Mr. Zalmon G. Sholes?

A. I told him he was a descendant of the original Sholes, inventor of the Remington Standard typewriter.

347 Q. 29. What, if anything, did you say to Mr. Hood in regard to the Rem-Sho being an improved Remington typewriter?

A. I told him that the Remington-Sholes machine was an improvement over the Remington machine, embodying many features which the Remington did not have, as, for instance, basket shift and rigid carriage.

Q. 30. Did you tell Mr. Hood that the Rem-Sho was an improved Remington machine?

A. I did not.

Q. 31. State what, if anything, you said to Mr. Hood in regard to the possibility of the Rem-Sho machine being offered for sale or sold as a Remington machine.

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Objected to as incompetent and improper, because the evidence is not proper in rebuttal of any statement made by Mr. Hood or made by Mr. Crean in his testimony in this case.

A. I did not offer to sell it as a Remington machine.

Q. 32. Did you make any statement to Mr. Hood to the effect that the Rem-Sho machine, or the Remington-Sholes machine, was the only machine outside of the old Remington that could be offered or sold as a Remington machine?

A. I did not.

Q. 33. Did you mention to Mr. Hood former Rem- 349
ington agents in various foreign countries as persons who had given up the handling of the old Remington in order to handle the new improved Remington?

A. I do not recall any such statement.

Q. 34. Did Mr. Hood or the party representing himself by that name order a machine from you?

A. He ordered me to have a machine in readiness for his order, packed for export.

Q. 35. Did you ever have any conversation with Mr. Hood in regard to the manner in which the machine should be invoiced; I mean how the machine should be designated or specified in the invoice? 350

A. I do not recall it.

Q. 36. Did you ever volunteer or make an offer to Mr. Hood to invoice the Remington-Sholes machine or Rem-Sho machine in any particular way if he decided to buy such machine?

Objected to as leading.

A. No.

Q. 37. Did you state to Mr. Hood who were the manufacturers of the Remington or Remington Standard typewriter?

A. I think I told him it was manufactured by 351
Wyckoff, Seamans & Benedict.

Q. 38. When did the Howe Scale Company receive the letter that has been offered in evidence as "Defendant's Exhibit Brooks & Co. Letter"?

A. July 29th, 1898.

Q. 39. At the bottom of this exhibit letter and above the signature "Jas. A. Hood," I find the statement, "Be particular to make out bill of the style Remington, etc." State what, if any, conversation you had had with any one prior to the receipt of this letter in regard to the manner of invoicing the machine, or in regard to the

352 use of the expression "of the style Remington" upon the bill of the machine?

Objected to as leading.

A. The conversation referring to this was with Mr. Hood at the Lafayette Hotel, nothing more being said regarding this than that he wished to have a machine similar to the Remington, as the parties for whom he was getting the machine knew no other machine. That is all I recall.

Q. 40. Was anything said by you or by Mr. Hood in regard to the manner in which the machine was to be in-
353 voiced or billed, and if so, what was said?

A. I do not recall anything regarding the invoicing of the machine. Nothing was said to the best of my recollection.

Q. 41. At the time of your interview with Mr. Hood at the Hotel Lafayette, did you add a postscript to a letter that you gave him at that time in regard to the Remington-Sholes machine, and if so, state fully the circumstances under which such postscript was written?

A. I do not recall having given any letter, although I will not positively say that I did not do so.

Q. 42. A letter has been offered in evidence during
354 the course of complainant's *prima facie* testimony, and it has been testified by Mr. Crean, alias James A. Hood, that such letter was handed to him by you, and that you in his presence added a postscript thereto, reading as follows: "It might prove of interest to you to know that the Remington machine at present is not manufactured by the Remington Company, but by Messrs. Wyckoff, Seamans & Benedict, so that this is really *the* Remington machine." I ask you whether you wrote such postscript, and if so, state fully the circumstances under which it was written.

A. I do not recall having given him a letter, so that I could not say anything about postscript. 355

Q. 43. Did you ever state to Mr. Hood that your company objected to putting in writing any statements or representations that were made by you to him?

A. No; I did not.

Q. 44. Did Mr. Hood ever state to you that unless you gave him a letter stating that the Rem-Sho machine was really the Remington machine, that he did not wish any letter at all?

A. He did not.

Q. 45. Did you say anything to Mr. Hood that would lead him to believe that you were attempting to sell him the Remington Standard typewriter? 356

Complainant's counsel objects to the question as incompetent and improper, because it calls for the conclusion or inference, and not for what was said or the words used in the interview.

A. I did not.

Q. 46. Did Mr. Hood make any statement to you in regard to the Remington Standard typewriter, and by whom it was manufactured?

A. No.

357

*Cross-Examination by Mr. Donnelly.*

X-Q. 47. You have stated in your direct examination that your present occupation is that of an advertising writer; where and for whom, if anybody, are you at present engaged in such occupation?

A. The firm of C. J. Heppe & Son, 1117 Chestnut street, Philadelphia, Pa.

X-Q. 48. For how long a period of time have you been engaged in your present occupation with the concern mentioned in your last answer?

A. Since August, '98.

358 X-Q. 49. Did you enter their employ directly after you left the service of the Howe Scale Company?

A. I did.

X-Q. 50. What had been your occupation prior to the time when you entered the service of the Howe Scale Company in February, '98?

A. Stenographer.

X-Q. 51. Where had you followed your occupation as stenographer, and were you also a typewriter operator?

A. In Philadelphia and vicinity; I also operated the typewriter.

359 X-Q. 52. Prior to February, 1898, had you ever been engaged in the sale of typewriting machines?

A. No, sir.

X-Q. 53. How came you to leave the employ of the Howe Scale Company on the 1st of August, 1898?

A. The prospects of a better position.

X-Q. 54. You have said in your direct testimony that your employment by the Howe Scale Company from February, '98, to August 1st, 1898, was that of stenographer and salesman. Just what did your duties of stenographer include and where was it performed?

360 A. The correspondence of the Remington-Sholes Company end of the business performed at 508 Market street, Philadelphia. And also part of the Howe Scale Company correspondence.

X-Q. 55. Did the duties which you performed relating to correspondence include the reading of letters received and the writing of letters sent by the Howe Scale Company relating to the Remington-Sholes or Rem-Sho typewriter?

A. I did not read the correspondence received, or only so far as minor details were concerned, such as answering inquiries and sending catalogues. The letters were usually written by me.

X-Q. 56. Do you mean letters in answer to those which were received by the Howe Scale Company referring to the Remington-Sholes or Rem-Sho typewriter? 361

A. I do.

X-Q. 57. Just what were your duties as salesman during the time you were in the employ of the Howe Scale Company from Feburary, 1898, to August 1 of said year?

A. Waiting on customers who called at the store, and in some instances looking up outside inquiries.

X-Q. 58. Did you canvass in the City of Philadelphia for the Howe Scale Company with the view or for the purpose of making sales of the Remington-Sholes, or Rem-Sho typewriter? 362

A. Occasionally.

X-Q. 59. And when you were sent to make sales or to interview parties with regard to the sale of the Remington-Sholes typewriter, what were your duties and what was your authority in the premises?

A. My duty was, if possible, to effect a sale and turn order over to the office where secured. I should have said the office of the Howe Scale Company.

X-Q. 60. And you were authorized to explain to parties whom you visited the Remington-Sholes machine, by whom it was made and its history and origin, so far as you knew it or had learned it; is such the fact? 363

A. Yes.

X-Q. 61. You distributed catalogues and gave data and was zealous and active in trying to promote sales of the Remington-Sholes typewriter or Rem-Sho typewriter; is such the fact?

A. I have always left catalogues where I called and endeavored to the best of my ability to effect a sale.

X-Q. 62. What other salesmen besides yourself

364 were engaged in the sale of the Remington-Sholes machine or Rem-Sho machine during the period that you were in the employ of the Howe Scale Company?

A. I cannot recall all of their names; Mr. H. I. Seddon was manager and we had different salesmen from time to time whose names I do not now recall.

X-Q. 63. Did Mr. H. I. Seddon have charge of the sales department of the Howe Scale Company relating to typewriters during all the time that you were in the employ of the Howe Scale Company?

A. He had charge of the Philadelphia office.

365 X-Q. 64. And did you act under his instructions and direction?

A. I did.

X-Q. 65. Was there a man by the name of Wilgus in the employ of the Howe Scale Company during the time you were in the service of said company?

A. I think Mr. Wilgus was my successor.

X-Q. 66. You have referred to the manner in which the Howe Scale Company advertised the fact of its agency by its signs. Did they display the name of the Remington-Sholes Company on their signs?

A. They did.

366 X-Q. 67. Then they also displayed the name Remington-Sholes on all their signs?

A. They did.

X-Q. 68. You say the name of the typewriter given on the sign was "Rem-Sho." What did you understand the word or term "Rem-Sho" to mean or refer to?

Defendant's counsel objects to the question as not proper cross-examination and as immaterial and irrelevant.

A. I understood it to mean an abbreviation or short term for Remington-Sholes.

X-Q. 69. You have referred to a catalogue used by 367
the Howe Scale Company in advertising the so-called Remington-Sholes or Rem-Sho machine, which catalogue has been put in evidence and marked "Defendant's Exhibit Rem-Sho Catalogue Nos. 2 and 3." Do you say that this catalogue is in all respects like the catalogues which were used and circulated by the Howe Scale Company during the time that you were in its employ, and, if not, please state specifically just how this catalogue differs from the catalogue used and circulated when you were in the employ of the Howe Scale Company?

A. The facts in the catalogue, arguments, prices, 368
etc., are about the same, but I notice that several cuts have been inserted, such as a picture of the Remington-Sholes Company factory, etc., in catalogue now in my hand. In general appearance the catalogue is the same.

X-Q. 70. Did the catalogue which the Howe Scale Company circulated during the time you were in its employ bear any words opposite the title page, or on the title page, which you do not find in this catalogue?

A. I think that instead of the cut now on this page there were some little printed matter, just what it was 369
I do not recall.

X-Q. 71. Was the printed matter which was then upon the title page or opposite the title page, which you do not find in this catalogue, in words or substance, "the only machine manufactured by a Remington" or anything to that effect?

A. I do not recall any such quotation.

X-Q. 72. Do you recall the words "the only machine manufactured by a Remington, second generation of typewriter builders by that great name," or anything in substance or effect like those words?

370 A. To the best of my recollection, all that appeared on the title page, if it was not entirely blank, was "catalogue of the Remington-Sholes typewriter, manufactured by the Remington-Sholes Company, Chicago, Ills."

X-Q. 73. Can you now say as a matter of recollection that the words which I have quoted were not in substance and in effect embodied in the catalogues of the Rem-Sho typewriter which were used and circulated by the Howe Scale Company during the period that you were in its employ?

371 A. I do not recall seeing these words, nor do I think they appeared.

X-Q. 74. Is your recollection now such that you can testify that those words which I have quoted to you were not in substance or in effect embodied and set forth in the Remington-Sholes catalogue circulated by the Howe Scale Company when you were in its employ?

A. My recollection of this point is not positive.

X-Q. 75. Then you cannot say but what those words might have been conveyed in the Remington-Sholes catalogue used by the Howe Scale Company when you

372 were their salesman and stenographer?

A. I can only say that I do not recall having seen them.

X-Q. 76. Have you ever seen those words in any catalogue issued by the Remington-Sholes Company?

A. To the best of my recollection, no.

X-Q. 77. Or in any other printed matter issued by or purporting to have been issued by the Remington-Sholes Company?

A. No.

X-Q. 78. When did you first meet the person whom you have referred to as James A. Hood?

A. Some time in July, '98.

X-Q. 79. Can you fix the day in July when you had your first interview with James A. Hood, so called? 373

A. I cannot.

X-Q. 80. Where did your first interview with James A. Hood, so called, occur?

A. Over the 'phone in the office of the Howe Scale Company.

X-Q. 81. Was that communication by telephone answered by you?

A. First by one of the employees of the Howe Scale Company, who called me to the 'phone.

X-Q. 82. What employe called you to the 'phone? 374

A. I do not remember.

X-Q. 83. Was it the bookkeeper of the Howe Scale Company?

A. It may have been.

X-Q. 84. After you received this message over the 'phone, what did you do and by whose direction did you do it?

A. I called on Mr. Hood on my own responsibility.

X-Q. 85. Whom did you represent on that occasion?

A. The Remington-Sholes Company.

X-Q. 86. You also represented the Howe Scale Company? 375

A. I represented them as salesagents of the Remington-Sholes machine.

X-Q. 87. And in the sale of all machines, or in your negotiations for sales, you represented the Howe Scale Company as the general salesagents of the Remington-Sholes Company; is that the fact?

A. It is.

X-Q. 88. What time of the day was it when you visited and met James A. Hood, so called, at the Hotel Lafayette, Philadelphia?

A. Some time during the afternoon.

376 X-Q. 89. You cannot state the precise hour?

A. I cannot.

X-Q. 90. How long did your interview with James A. Hood last on the occasion when you first met him at the Hotel Lafayette, Philadelphia?

A. As nearly as I can remember it, twenty minutes or half an hour.

X-Q. 91. Were you engaged in conversation with James A. Hood for the period mentioned by you in the last answer?

A. I was.

377 X-Q. 92. What was the subject of the conversation, that is, what did it relate to?

A. Typewriters.

X-Q. 93. What typewriters?

A. The one I represented and the Remington Standard machine.

X-Q. 94. Did the conversation in the main relate to those two machines?

A. It did.

X-Q. 95. Do you now remember or recall all that was said in that conversation concerning the Remington typewriter or the Remington-Sholes typewriter by

378 you or by Mr. James A. Hood?

A. I do not recall all of the conversation, that is, the conversation verbatim.

X-Q. 96. Do you now remember all the language or statements which you made concerning the Remington-Sholes typewriter or Rem-Sho typewriter or the Remington machine during the interview between yourself and Mr. James A. Hood, so called?

A. Only the general outline of the conversation and some particular parts of it.

X-Q. 97. Then some of the details of that conversation and some particular parts of it you do not now

recall and are not able to state; is such the fact? 379

A. It is.

X-Q. 98. Did you have more than one interview with James A. Hood, so called, at the Hotel Lafayette or elsewhere?

A. I exchanged a few words with him over the 'phone, after which I called on him at the Lafayette, after that leaving him and later on coming back again to the Lafayette, the same afternoon.

X-Q. 99. What was the occasion or cause of your making the second visit to the Hotel Lafayette and there conferring with James A. Hood, so called?

A. To give him prices for typewriters at export. 380

X-Q. 100. Anything else?

A. Nothing more, to the best of my recollection.

X-Q. 101. On the occasion of the second visit to James A. Hood at the Hotel Lafayette in July, 1898, did you then and there deliver to him any catalogues, papers, documents or anything else, and, if so, what did you deliver to him?

A. On the second visit I do not recall having delivered to him anything, unless, perhaps, some small circulars; I had left catalogues with him to look over on my first visit.

381

X-Q. 102. Did you not deliver a letter to him at the time of your second visit to the Hotel Lafayette?

A. None that I now recall.

X-Q. 103. Is there any reason which you can assign why you do not recall the fact that you did deliver a letter to James A. Hood, so called, if such an incident occurred?

A. I can assign no reason other than the lapse of time and the fact that I am no longer interested in the typewriter business, having other matters to engage my mind.

382 X-Q. 104. If such letter was delivered by you to Mr. James A. Hood at the Hotel Lafayette on the occasion of the second visit, you attribute your failure to recall that fact to the lapse of memory, do you not?

A. I do.

X-Q. 105. Did you at or near the time of this interview with James A. Hood, so called, make any memorandum in writing of the conversation which took place between Mr. Hood, so called, and yourself as to what occurred in those interviews?

A. I think I made a memorandum of Mr. Hood's name and address and what he wanted in a card-file
383 system used for that purpose in the office of the Howe Scale Company; I merely entered him as a prospect, specifying what he wanted.

X-Q. 106. But you made no memorandum in writing of the conversation which occurred between you on those occasions?

A. Nothing more than the card system.

X-Q. 107. And after those interviews I presume you dismissed the matters from your mind; is such the fact?

A. Practically so, beyond the hope of effecting a
384 sale.

X-Q. 108. But in so far as the conversations were concerned, you dismissed those from your mind, did you not?

A. Yes.

X-Q. 109. When was your attention first called to these conversations or as to what took place between you and James A. Hood, so called, after those conversations occurred and prior to giving your testimony here in this case?

A. About three or four days ago.

Adjourned to meet again April 5, 9 A. M.

385 Met pursuant to adjournment. Present, parties as before.

X-Q. 110. Who called your attention to the conversations between you and James A. Hood, so called, three or four days ago?

A. Mr. Frank Sholes.

X-Q. 111. Mr. Frank Sholes, of Philadelphia?

A. Yes.

X-Q. 112. Did he read over to you or state to you the substance of the evidence which James A. Hood, so called, had given in this suit relating to his conversations and interviews with you at the Hotel Lafayette, 386 in Philadelphia?

A. He merely asked me what my recollection of the matter was; all the facts he gave me were simply to revive my memory on the case in question, as I had entrely forgotten about it.

X-Q. 113. What facts, if any, did Mr. Frank Sholes give you or state to you for the purpose of reviving your memory of the transaction between you and James A. Hood at the Hotel Lafayette?

A. He merely asked me if I recalled having met such a party in connection with a sale of a typewriter.

X-Q. 114. Did he then and there state anything to 387 you as what James A. Hood, so-called, had testified to or stated in this case?

A. Only in a general hasty way, as I was very busy at the time.

X-Q. 115. Did he state to you in a general way the substance of what James A. Hood, so called, had testified to concerning his interview and transaction with you at the Hotel Lafayette?

A. Only a few words to refresh my memory on the subject—that is, a few general thoughts to help me remember the occasion.

388 X-Q. 116. Has the testimony of James A. Hood, so called, been read over to you, or have you talked with anybody other than Mr. Frank Sholes about the testimony of James A. Hood, so-called, relating to his interview with you at the Hotel Lafayette?

A. I have seen part of his testimony, but only such as would help me to remember my interview with Mr. Hood. The testimony was shown me by Mr. Fisher, counsel for defendant.

X-Q. 117. Who requested you to come here as a witness?

A. Mr. Frank Sholes.

389 X-Q. 118. At the time of your first interview with Mr. James A. Hood, so called, and at the close of the interview, did he request you to bring him a letter or a communication stating the substance or purport of the interview between you and him at the Hotel Lafayette?

A. I do not recall his having done so.

X-Q. 119. Do you now say that he did not so request you to do?

A. I cannot say positively, but my recollection is that he did not.

X-Q. 120. Did you or not when you visited Mr.
390 James A. Hood, so called, at the Hotel Lafayette, Philadelphia, bring with you a letter signed by Mr. Seddon for and on behalf of the Remington-Sholes Company, or the Howe Scale Company, which letter you afterward showed to Mr. James A. Hood, so called?

A. I do not recall any letter in connection with my conversation with Mr. Hood, that is, a letter from Mr. Seddon.

X-Q. 121. Do you now testify that you did not deliver such a letter at the time and place mentioned in my last cross-question?

A. I will not, because I am not positive on the subject.

X-Q. 122. Have you now any recollection on that subject? 391

A. I have not, not as regards the letter.

X-Q. 123. If you delivered such a letter you knew the contents at the time, did you not?

A. I naturally would from the fact that it would be more than likely that I had written the letter on the typewriter.

X-Q. 124. But if you did write such a letter on the typewriter you have not now the slightest recollection of its contents; is such the fact?

A. It is.

X-Q. 125. Do you now recall the fact that on your second visit to the Hotel Lafayette, and after you presented a letter to James A. Hood, so called, signed by Mr. Seddon, he expressed dissatisfaction with the letter as not embodying the substance or a portion of the conversation which had previously occurred between you? 392

Question objected to by counsel for defendant, as witness has repeatedly stated that he did not recall having presented a letter to Mr. Hood.

A. I can only say that I do not recall anything about the letter.

X-Q. 126. After you presented the letter to James A. Hood, so called, did you add a postscript to the letter in your own handwriting, which postscript you signed for and on behalf of the Remington-Sholes Company? 393

A. I can only say again that I know nothing about the letter, to my best recollection, and consequently could know nothing about a postscript.

X-Q. 127. Will you now testify that you did not add a postscript to such a letter after you returned to the Hotel Lafayette the second time, in these words:

894 "It might prove of interest to you to know that the Remington machine at present is not manufactured by the Remington Company, but by Messrs. Wyckoff, Seamans & Benedict, so that this is really the Remington machine"?

A. I could not testify to this effect when I do not even recall the letter.

X-Q. 128. Will you testify that you did not add a postscript to said letter in the words quoted to you in my last question?

A. I will not testify to this effect, as my recollection is not clear on the subject.

895 X-Q. 129. Have you now any recollection on that subject?

A. I have not.

X-Q. 130. If you did add such a postscript to the letter, it was correct, was it not?

A. It could not have been correct in view of my previous conversation with Mr. Hood from the fact that Mr. Hood was thoroughly familiar with the Remington machine and I had explained to him in what respect the Remington-Sholes, or Rem-Sho, differed from the Remington and in what respect I considered it su-

896 perior, but I did not give him any reason whatever or try to induce him to think that I was selling him a Remington machine, and he knew this very well. It might be possible that in the course of our conversation I mentioned Mr. F. Remington's connection with the Remington-Sholes machine and the fact that he was a descendant of the original Remington, but I gave him no reason whatever to suppose that I was selling him or trying to sell him a Remington machine. The nearest statement that I made to this effect, as I recall it now, was that the Rem-Sho machine was similar to the Remington machine in regard to shift-key and univer-

sal keyboard, and that a Remington operator would ex- 397
perience no trouble in operating a Rem-Sho machine, but I am quite positive that Mr. Hood could not have understood me to say that I was trying to sell him a Remington machine. It might also be possible that I said to him that the Rem-Sho machine was the only one manufactured by a Remington, meaning, of course, Mr. Frank Remington. It would be absurd for Mr. Hood to put the construction on my conversation that he has from the fact that he was thoroughly familiar with the Remington Standard typewriter and asked me to explain the Rem-Sho machine to him. I never en- 398
deavored to misrepresent the machine as being the Remington. In fact, my instructions on this point were positive not to misconstrue the name Remington as applied to the Rem-Sho machine. I recall on several occasions people coming into the office to look at typewriters asking me, "Is this the Remington machine?" to which I always replied that it was not, and endeavored to explain to them just what the machine was, namely, the invention of a machine of one of the original descendants of the older Sholes, inventor of the Remington typewriter. In other words, a second generation of typewriter inventors and manufacturers, in 399
the latter case bringing in Mr. Frank Remington as manager of the Remington-Sholes Company. When asked regarding the Remington machine I always made a point to mention Messrs. Wyckoff, Seamans & Benedict as connected with the Remington machine. Further than this Mr. Hood could not possibly have misconstrued my conversation to mean that I intended to sell him a Remington machine when I had previously gone over the Rem-Sho catalogue with him, and had left it with him to read over between the time of my first and second visits to the Hotel Lafayette; so that

400 the letter and postscript referred to as having been written by me and delivered to Mr. Hood, if I should have written such a letter or postscript, could not possibly be misconstrued to mean that I was offering for sale a Remington machine. And this point was clearly explained by me to Mr. Hood. In view of what Mr. Hood told me concerning the export house which he represented that he was dissatisfied with the treatment accorded him by the Remington Typewriter Company, as he called them, and his desire to get a machine similar to the Remington, my conversation with him relative to the Rem-Sho and its similarity to the Remington
401 machine would be quite natural, but I never intimated or in any way tried to induce him to believe that he was buying from me a Remington machine. And from the familiarity he showed concerning the typewriters in general, he certainly understood this point.

X-Q. 131. Now will you just tell the court whether you did or did not write a postscript to a letter which you delivered to James A. Hood, so called, in which, among other things, you said "so that this is really the Remington machine," referring to the Remington-Sholes, or Rem-Sho, typewriter?

402 A. Following out my conversation with Mr. Hood, it might be possible that I wrote him a letter, although I do not recall this letter at all, and if I had added such a postscript I did not mean to convey to Mr. Hood's mind the fact that this was the Remington Standard typewriter. For if I had written such a letter it would have been directly contradictory to my conversation with Mr. Hood at the Hotel Lafayette. My recollection on this point is very clear; that is, that I mentioned Mr. Remington's name in connection with the manufacture of the Rem-Sho machine, but did not call it the Remington machine. As to the letter and

postscript I am not positive, as I have frequently said before. 403

X-Q. 132. Please say catagorically whether you did or did not write the words quoted in my last question as a part of the postscript of said letter.

The question is objected to, as the witness has repeatedly stated that he has no distinct recollection on this subject.

A. I will make no statement regarding this letter; as I have said previously, I do not recall it.

X-Q. 133. Will you now take a piece of paper and a pen and ink and write upon said piece of paper the words "the Remington machine at present is not manufactured by the Remington Company, but by Messrs. Wyckoff, Seamans & Benedict, so that this is really *the* Remington machine," signed the Remington-Sholes Company, per Romig? 404

A. I have written the matter as requested, and here it is.

The matter written as requested in the question is marked for identification as "Quotation in Romig's Handwriting."

At request of counsel for defendant the written matter last referred to is offered in evidence and marked "Defendant's Exhibit Specimen of Romig's Handwriting." 405

X-Q. 134. Since the interview occurred with you and the so-called James A. Hood at the Hotel Lafayette, Philadelphia, have you learned or been informed who Mr. James A. Hood, so called, really was?

A. I have. I have heard that his name is Thomas F. Crean.

It is stipulated by counsel that at his option defendant's counsel shall either produce this witness

406 for further cross-examination after the letter and postscript referred to in the cross-examination has been shown to witness, or will stipulate that said postscript was written by the witness, if defendant's counsel becomes satisfied that such was the fact.

*Re-Direct Examination.*

R-D. Q. 135. In direct question 46 you were asked whether Mr. Hood made any statement to you in regard to the Remington Standard typewriter and by whom it is manufactured, and to such question you an-
407 swered "No." How do you reconcile this answer with the statements repeatedly made in the course of your examination that Mr. Hood showed an entire familiarity with the Remington Standard typewriter and with the so-called Remington Typewriter Company?

Question is objected to by complainant's counsel as incompetent and improper because it is in the nature of cross-examination, not proper redirect examination, and further, because the evidence of the witness is clear and must speak for itself.

408 A. I do not know why I answered this question in the manner I did unless it is that I did not pay proper attention to the question. For the very fact that Mr. Hood stated to me that the company he represented were dissatisfied with treatment accorded them would prove that he was familiar with the Remington Standard typewriter and the Remington Company. I can only explain it as an error on my part.

R-D. Q. 136. State, if you know, by whom the catalogues were furnished to the Philadelphia office of the Howe Scale Company. I mean the catalogues relating to the Rem-Sho typewriter.

Objected to as not proper for re-direct examination. 409

A. They were furnished by the Remington-Sholes Company, of Chicago.

R-D. Q. 137. In your answer to X-Q. 67 you have stated in substance that the Howe Scale Company displayed the name Remington-Sholes on all their signs. State whether you mean to be understood that the Howe Scale Company displayed the name Remington-Sholes on signs relating to the general business of the Howe Scale Company.

A. The name Remington-Sholes Company appeared on the front bulk window of 508 Market street, Philadelphia, over the name Howe Scale Company and Tribune Bicycles. The name Remington-Sholes Company also appeared on two or three other windows on the front of the same store; these were smaller signs than the one over the name of the Howe Scale Company. The name Howe Scale Company appeared on a painted sign over all of these signs. I think that the name of the Remington-Sholes Company did not appear on the big sign, but only on the window signs. 410

R-D. Q. 138. In the course of your answer to X-Q. 130 you have stated in substance that your instructions were positive not to misconstrue the name Remington as applied to the Rem-Sho machine. Please state what your instructions were in this regard, and from whom they were received. 411

A. At the time I was engaged as stenographer and salesman in the office of the Howe Scale Company Mr. Frank Remington demonstrated to myself and a typewriter repairman all of the salient features, advantages, etc. of the Rem-Sho machine as compared with other typewriters. Further than this he gave us a brief history of the manufacture of the machine, stat-

412 ing that Mr. Zalmon Sholes, a descendant of the original Sholes who invented the Remington Standard machine, had invented the Rem-Sho machine; and that he, Mr. Frank Remington, was also a descendant of the original Remington connected with the old Remington Standard typewriter. He told us not to confuse the name Remington in the sale of the Rem-Sho machine, or lead people to think that we were selling the Remington machine; it was merely given us as a matter of history which we could use if necessary, but I remember clearly that he told us that the Rem-Sho machine was in no way connected with the Remington
413 Standard typewriter.

R-D. Q. 139. In the course of this testimony Mr. Thomas F. Crean, who introduced himself to you at the Hotel Lafayette, Philadelphia, as Mr. James A. Hood, has stated as follows: "In my original conversation with Mr. Romig when I intimated I might be able to do some business with him in the sale of typewriters for the Island of Jamaica, or elsewhere, and indicating that the only machine known to any extent there was the Remington machine, he told me that that was very well and if I desired he could invoice the
414 machines to me as Remington machines. In the second letter on the letter-head Brooks & Co. I asked Mr. Romig to invoice the machines in the manner in which he voluntarily suggested he would." I ask you to consider this statement of Mr. Crean, alias Hood, and state whether or not the same is true in substance or in fact.

Question is objected to as incompetent, because the evidence called for thereby does not grow out of or relate to the cross-examination, and the same is not proper re-direct examination, but is a re-opening of the defendant's case.

A. In answer to this statement of Mr. Hood's I will say that so far as the facts that he had mentioned to me that the only machine known to any extent in Jamaica was the Remington, this is true. In regard to my invoicing these machines, which I might possibly sell him, as Remington machines and the fact that I voluntarily agreed to do so, his answer is entirely untrue, as I never made any such statement. The matter of invoicing the machines was not discussed by us further than price, manner of shipment, etc., and the nearest approach to any such statement I made to him was our conversation relative to the relation of the Remington Standard typewriter to the Rem-Sho machine in which I had mentioned that Mr. Frank Remington was connected with the Rem-Sho Company, or Remington-Sholes Company. 415 416

R-D. Q. 140. I call your attention to page 24 of "Defendant's Exhibit Rem-Sho Catalogue No. 2 and 3," and ask you to state whether or not the matter appearing upon this page of the catalogue in regard to the name of the Remington-Sholes Company appeared in the catalogue used by you while acting as a salesman of Rem-Sho typewriters.

A. It did. 417

*Re-Cross Examination by Mr. Donnelly.*

R-X Q. 141. In your answer to R-D. Q. 139 you deny having stated to Mr. Crean or having agreed to invoice Remington-Sholes machines as Remington machines. How is it that you are so positive that you did not make such statements to Mr. Crean or agree to invoice machines in the way requested by him, and yet you are not able to say that you ever wrote a letter or delivered a letter to him, or added a postscript thereto in your own handwriting, as previously inquired about?

418 A. In answer to this I can only account for my recollection in this respect from the fact that I would not have been allowed to do anything of this sort, my instructions having always been positive regarding the confusion of the name Remington with that of Rem-Sho, and I never could have made such a statement.

R-X Q. 142. Is your last answer the best and the only answer you can make to my last question?

A. Yes.

R-X Q. 143. In answer to R-D. Q. 138 you say that when you were engaged as stenographer and sales-
419 man in the office of the Howe Scale Company Mr. Frank Remington "gave us a brief history of the manufacture of the machine, stating that Mr. Zalmon Sholes, a descendant of the original Sholes who invented the Remington Standard machine, had invented the Rem-Sho machine, and that he, Mr. Frank Remington, was also a descendant of the original Remington connected with the old Remington Standard typewriter. He told us not to confuse the name Remington in the sale of the Rem-Sho machine or lead people to think that we were selling the Remington machine." Did Mr. Franklin Remington or anybody else at any time subsequently
420 make any other statement or give any further instructions on the same subject referred to in the quotations of your answer, and if so, by whom were such persons and instructions made and given, and when?

A. I received no other instructions than those given me by Mr. Frank Remington regarding the history and selling of the machine.

R-X Q. 144. Did you or did any other of the salesmen to your knowledge have any typewritten instructions referring to the history of the Remington-Sholes machine, or the connection of Mr. Frank Remington therewith? I mean other than the printed catalogue.

A. Some time after the opening of the office at 508 421
Market street I think there was issued a typewritten copy of instructions to salesmen embodying what Mr. Remington had previously told me.

R-X Q. 145. Did you ever see or hear read those typewritten instructions to salesmen?

A. Yes.

R-X Q. 146. Did those instructions, among other things, contain the following language: "The machine has now been fully explained and it remains with the salesmen to add such other interesting facts, the connection of our Mr. Remington with this machine 422
and the relation to the old Remington Standard; the fact that this is a second generation of typewriter builders and that the same standard excellence is being maintained in the manufacture of this machine as all other goods which have been produced by the Remingtons"?

A. I could not recollect the statement in its entirety, nor could I recall any particular part of the instructions as they appeared; having practically gone over the ground before with Mr. Remington, I paid little or no attention to these written instructions, and therefore could not state positvely what they contained.

R-X Q. 147. Is it now your best recollection that 423
said typewritten instructions which you say you saw did contain in substance and in effect the language quoted in my last cross-question?

A. I will not say that they did or did not, as my recollection is not entirely clear.

R-X Q. 148. Did you or did you not ever make statements which in substance and effect were the same as those which I have quoted in my preceding cross-question when you were selling or offering for sale the Remington-Sholes typewriter?

A. I might have used that argument.

424 R-X Q. 149. Is it not your recollection that you and other salesmen of the Howe Scale Company did use that argument when you were selling or endeavoring to sell Rem-Sho typewriters?

A. I could hardly be expected to know what arguments the other salesmen used. As to myself, my previous answer answers this question as well.

R-X Q. 150. What is your present recollection as to whether you did or did not use that argument?

A. I may have used it. It is simply impossible for me to recall whether I did or did not.

425 R-X Q. 151. In one of your answers you have stated that people came into your store, that is, the store of the Howe Scale Company in Philadelphia, and inquired whether this (the Remington-Sholes) machine was the "Remington" machine, and you always explained that it was not. In your capacity as stenographer and typewriter did you or not also have occasion to write letters in reply to letters received to the effect that your machine was not the Remington?

Question is objected to as not proper re-cross examination, as the matter inquired about was not in any manner considered on the re-direct exami-

426 nation of the witness.

A. I do not recall having written any letters covering this point, although I may have done so.

W. J. Romig.

JOHN LESLIE RUSSELL, a witness produced on behalf of defendant, having been first duly sworn, testified as follows:

Q. 1. State your name, age, residence and occupation.

A. John Leslie Russell; twenty-three years; 524

Spruce street, N. W., Washington, D. C.; assistant baggage agent, Pennsylvania Railroad. 427

Q. 2. Were you ever employed in an office on 14th street in the City of Washington, and if so, state the exact location of such office?

A. I was employed in an office located No. 612 14th street, N. W.

Q. 3. When were you employed at such location and by whom were you employed during the time that you were there?

A. I was employed there from 1893 to 1898 inclusive, by Messrs. Bryce & Lipscomb, real estate agents.

Q. 4. Did any other person or company occupy a part of the offices of Messrs. Bryce & Lipscomb while you were employed by them at 612 14th street? 428

A. The Rem-Sho Typewriter Company occupied a portion of the office.

Q. 5. During what period of time did the Rem-Sho people occupy a portion of that office?

A. I cannot give exact dates, but they were there for about six months.

Q. 6. When did you leave the employ of Bryce & Lipscomb?

A. March 14, 1899. 429

Q. 7. State as nearly as you can when the Remington-Sholes Company occupied a portion of the office of Bryce & Lipscomb.

A. I think it was about June until December, 1898.

Q. 8. By whom were you employed during the period from June until December, 1898?

A. I was employed only by Bryce & Lipscomb.

Q. 9. Were you ever in the employ of the Remington-Sholes Company, or of the Howe Scale Company, or of Mr. Frank L. Sholes?

A. No, sir; I was not.

430 Q. 10. Did you ever receive any remuneration from either of the persons mentioned in my last question?

Objected to by complainant's counsel as immaterial and irrelevant.

A. No, sir; I did not.

Q. 11. Who else was employed in the office of Messrs. Bryce & Lipscomb, and in that part of the office occupied by the Remington-Sholes Company?

A. There was no one else employed there.

Q. 12. Had Messrs. Bryce & Lipscomb no other em-
431 ployés besides yourself during the period from June until December, 1898?

A. No, sir; they had not.

Q. 13. Did any one else occupy that office besides Messrs. Bryce & Lipscomb and the Remington-Sholes Company during that period?

A. No, sir; there was no one else in there.

Q. 14. State, if you know, who represented the Remington-Sholes Company during the time that they occupied a portion of Messrs. Bryce & Lipscomb's office at 612 14th street.

A. Mr. F. L. Sholes.

432 Q. 15. Did you ever have any authority from Mr. Sholes to transact the business of the Remington-Sholes Company in his absence?

A. No, sir; I did not.

Q. 16. State if you recall what machines were exhibited in the office of the Remington-Sholes Company at 612 14th street.

A. The Rem-Sho typewriter.

Q. 17. Was there any advertising matter exhibited in connection with such machine?

A. Yes, sir; there was.

Q. 18. What was the character of that advertising matter? 433

A. As near as I remember, there was a folder and a pamphlet; then there was one single card.

Q. 19. Have you any recollection of a visit made to the office of the Remington-Sholes Company, 612 14th street, by a man and woman, at which visit the man stated to you that he had been advised that the Rem-Sho machine was an improved Remington? And at which visit you showed the man the Rem-Sho machine and compared it with a No. 2 Remington typewriter in the same room?

434

A. Yes, sir; I have.

Q. 20. Did you state to the man or to the woman that the Rem-Sho machine was invented by the inventors of the old Remington and was being made by the people who make the old Remington?

Question is objected to by defendant's counsel as incompetent and improper, because it is leading and because the witness after his attention is directed to the occurrence should be required to state the conversation that occurred without any suggestion as to the character of such conversation.

A. No, sir; I did not. 435

Q. 21. State as nearly as you can recall what occurred at that time in the way of conversation and what was said, as near as you can recall, by the parties present.

A. As near as I can recall, the party came into the office, I showed them the Rem-Sho typewriter, also the No 2. Remington typewriter, which was the property of Messrs. Bryce & Lipscomb, and pointed out to them as near as possible the many good points which the Rem-Sho typewriter had that were lacking in the Remington. I also stated that the Rem-Sho typewriter was

436 invented by a son of the inventor of the old Remington; that is about all.

Q. 22. What, if anything, did you state in regard to the parties by whom the Rem-Sho machine was being manufactured?

A. I stated that they were not in the trust as the Remington people were, and for that reason could afford to sell at a lower figure. I also said that if he was perpared to make a cash offer, I thought he could buy a machine for about $85.

Q. 23. Did you state by whom the Rem-Sho machine was manufactured at that time?

437 A. I did not state any name, but said that it was manufactured by the son of the inventor of the old Remington. I thought you said invented; I did state that it was manufactured by the Remington-Sholes Typewriter Company.

Q. 24. Did you make any statement as to the Rem-Sho machine being manufactured by the same people who were at that time making the Remington machine?

A. No, sir; I did not.

Q. 25. Did you give either of the parties at that

438 time any catalogues of the Rem-Sho machine?

A. Yes, sir; I did.

Q. 26. I call your attention to "Defendant's Exhibit Rem-Sho Catalogue, Nos. 2 and 3," and ask you to state how it compares with the catalogue that you gave one of the parties referred to in your previous answers.

A. I cannot say exactly whether I gave him that catalogue or not, but I think it is.

Q. 27. Did the catalogue that you gave him look like that?

A. This looks to me like it is a larger catalogue than the kind that was at the office.

Q. 28. How does the outside of this catalogue compare with the catalogue which you gave the parties mentioned in your previous answers? 439

A. I do not remember seeing any catalogue that looked like that.

Q. 29. Describe as nearly as you can the catalogue that you did give at that time.

A. I would not remember the catalogue unless I saw it, for I had nothing to do with them and nothing to call my special attention to them.

Q. 30. In showing the parties the No. 2 Remington machine, what was your object? 440

A. My object was to show them some improvements which were on the Rem-Sho machine, and which the Remington did not have.

Q. 31. Where was Mr. Sholes at the time these parties called at the office of the Rem-Sho Company?

A. Mr. Sholes was in Philadelphia.

Q. 32. Did you ever have occasion at any other time to answer inquiries to a man and woman at the office of the Remington-Sholes Company and in which the man stated that he had been advised that the Rem-Sho machine was an improved Remington? 441

A. No, sir; I do not.

*Cross-Examination by Mr. Donnelly.*

X-Q. 33. What time in 1898 did you leave the employ of Bryce & Lipscomb?

A. I left the employ of Bryce & Lipscomb in 1899.

X-Q. 34. What time in 1899 did you leave their employ?

A. As near as I can remember, it was in the latter part of March or the first of April.

X-Q. 35. Was the Remington-Sholes office with Bryce & Lipscomb when you left their service?

A. No, sir.

442 X-Q. 36. For how long a period did the Remington-Sholes Company occupy an office with Messrs. Bryce & Lipscomb?

A. I think about six months.

X-Q. 37. State when they first occupied the office of Bryce & Lipscomb and when they removed therefrom.

A. I think they came there in June and left the latter part of December.

X-Q. 38. Who was in charge of that office, I mean the office of the Remington-Sholes Typewriter Company or Remington-Sholes Company, during the period
443 of time that it occupied an office with Bryce & Lipscomb?

A. Mr. F. L. Sholes.

X-Q. 39. And what was his business? What did he do, so far as you observed?

A. He was the agent for the Rem-Sho Company, solicited orders and showed the machine to all persons making inquiries of the typewriter with a view of purchasing.

X-Q. 40. Was he at the office or in the office all the time during business hours, or was he sometimes or fre-
444 quently absent therefrom?

A. He was in the office most of the time, but sometimes he left the office to attend to business.

X-Q. 41. Did he at times go away from the city during the period when the Remington-Sholes Company occupied an office with Bryce & Lipscomb?

A. I remember his going to Philadelphia.

X-Q. 42. Do you now remember his going elsewhere during that period?

A. I cannot recall the fact of his going away at any other time.

X-Q. 43. But you do recall the fact that he was

sometimes or frequently out of the office looking after 445
business in the City of Washington, do you not?

A. I recall the fact of his sometimes being out.

X-Q. 44. Do you know whether or not the Remington-Sholes Company leased the portion of the office it occupied from Bryce & Lipscomb?

A. They rented upon a monthly agreement.

X-Q. 45. Of whom?

A. Of Messrs. Bryce & Lipscomb.

X-Q. 46. When Mr. Sholes was out of the office for any purpose, who looked after the business or answered calls relating to the business of the Remington-Sholes 446
Company, if anybody?

A. Nobody. I answered what inquiries I could as to Mr. Sholes and also gave any information that I could about the typewriter simply as a personal favor.

X-Q. 47. At whose request did you do this?

A. I was not requested to answer any questions whatever concerning the machine, but simply asked to inform people if I could where Mr. Sholes was, and when he was expected back.

X-Q. 48. Did he not request you to give any information that you could or catalogues to inquirers for typewriting machines? 447

A. He stated that if any one came in and asked for a catalogue to give it to them.

X-Q. 49. What else did he state?

A. Nothing that I can especially recall.

X-Q. 50. Do you mean to be understood as saying that Mr. Sholes left his business without any directions as to what should be done during his absence other than you have already stated?

A. Yes, sir; I do.

X-Q. 51. But you did sometimes answer inquiries and give information when people called, and you in-

448 formed Mr. Sholes of that fact, did you not?

The question is objected to by counsel for defendant as immaterial and incompetent and irrelevant, as the witness has already repeatedly stated that he was neither authorized or requested by Mr. Sholes to act for him in his absence.

Counsel for complainant objects to the statement of counsel on the record as being argumentative and in the nature of instruction to the witness.

A. I did as best I could.

X-Q. 52. And I take it that you did not do any-
449 thing or say anything in regard to the business of Mr. Sholes or the Rem-Sho Company that you were not authorized to do or say; is such the fact?

Same objection.

A. I was not authorized to say anything in regards to the business of the Rem-Sho typewriter.

X-Q. 53. But you did say some things at times about it and you notified Mr. Sholes thereof, did you not?

Same objection.

A. No, sir; I never notified Mr. Sholes.

450 X-Q. 54. Why didn't you?

Same objection.

A. Because I never received any instructions from him and only told people about the typewriter which I knew myself.

X-Q. 55. Where did you get your information?

Same objection.

A. I had had several personal conversations with Mr. Sholes, and also gathered information from the catalogue and by use of the machine.

X-Q. 56. Whatever you stated about the machine,

then, or the history of the machine, you gathered, I presume, from Mr. Sholes and from the catalogue; is such the fact? 451

Same objection.

A. As to the inventor, I gathered this information from Mr. Sholes; as to the working and improvements, I acquired those by use of the machine.

X-Q. 57. Where did you get your information about Mr. Remington?

A. I have given no information about Mr. Remington. I simply said that the inventor of the Rem-Sho machine was a son of the inventor of the Remington typewriter. 452

X-Q. 58. I know what you have said, but I asked you where you got the information, if you did get any, about Mr. Remington?

Objected to as immaterial, irrelevant and incompetent.

A. I never received any information about Mr. Remington or never gave out any.

X-Q. 59. Then you never heard of Mr. Reimngton, as I understand it?

A. No, sir; not by name. 453

X-Q. 60. Never heard of the Mr. Remington connected with the Rem-Sho typewriter or the Remington-Sholes Company?

A. No, sir; not by name.

X-Q. 61. Did you ever read or look through the catalogues of the Remington-Sholes Company?

A. Yes, sir.

X-Q. 62. Frequently?

A. No, sir.

X-Q. 63. How often?

454 A. I cannot recall the number of times; I simply read the catalogues for my own information.

X-Q. 64. Did you read it thoroughly?

A. I cannot say that I did.

X-Q. 65. Did you read what it said about Mr. Sholes being the inventor of the Rem-Sho machine?

A. I do not remember.

X-Q. 66. When was this conversation with this man and woman at the office of the Rem-Sho Company?

A. As near as I can remember, it was in September or October, 1898.

X-Q. 67. How long did the conversation last?

455 A. That I cannot recall.

X-Q. 68. Five minutes?

A. About ten minutes.

X-Q. 69. When was your attention first called to this conversation since it occurred; I mean before testifying to-day?

A. About a week ago.

X-Q. 70. Who called your attention to it?

A. Mr. Sholes wanted to know if I could arrange to get off and testify.

X-Q. 71. What Sholes do you refer to?

456 A. Mr. F. L. Sholes.

X-Q. 72. Was that all he said?

A. He said that there was a law suit and they might need me to testify.

X-Q. 73. Tell you what about?

A. No, sir.

X-Q. 74. When did you first know what you were required for as a witnesss in this case? I mean as to what you were to testify about.

A. I was never told as to what I was to testify about, except that they would like to have me tell what conversation, as near as I could remember, that took place

between myself and a lady and gentleman who called in 457
the office while Mr. Sholes was in Philadelphia.

X-Q. 75. Who said that, and when?

A. Mr. Sholes told me this morning; Mr. Fisher also told me. Mr. Fisher is counsel here present.

X-Q. 76. Now, until Mr. Sholes called your attention to the matter of this conversation which you say was about a week ago, had you thought about this conversation since it occurred?

A. No, sir.

X-Q. 77. You had not charged your mind with it or tried to remember what was said?

458

A. No, sir; I had not. It simply was an occurrence which one would forget unless his attention was called to it later.

X-Q. 78. I presume you frequently had calls in your office relating to the business of Bryce & Lipscomb in which you had conversations with people and those things were frequent occurences; is such the case?

A. I often had conversations, yes, sir, in the real estate business.

X-Q. 79. And I take it these offices of Bryce & Lipscomb and Rem-Sho office were all connected; was such the fact?

459

A. They were connected in no business way, but were in the same room.

X-Q. 80. Now, as regards to the conversation which occurred between you and this gentleman and lady, I presume that you could not now recall all that was said between you on that occasion; am I right?

A. I cannot say that I can recall everything, but I remember the main facts.

X-Q. 81. But some things which occurred or might have been said by you or by this lady and gentleman

460 you may have forgotten, or may not now be able to recall; isn't that so?

A. It is possible.

X-Q. 82. You made no written memorandum of the conversation?

A. No, sir; I did not.

X-Q. 83. You talked with the gentleman and lady about the price of the Rem-Sho typewriter, I understand it so; is that so?

A. I said that the Rem-Sho machine was not in the trust as the Remington was, and for that reason they could afford to sell the machine cheaper, and that I
461 thought if they offered Mr. Sholes $85 cash, they might be able to purchase a machine.

X-Q. 84. Where did you get the information that the Rem-Sho machine could be purchased for $85?

A. Mr. Sholes informed me that he was able to sell a Rem-Sho machine for $85 cash, and that if I could sell any to my friends he would pay me a commission. Or if I could induce any of my friends to buy a typewriter from him he would pay me for my trouble.

X-Q. 85. Then, if I understand your last answer, Mr. Sholes had authorized you to sell or offer for sale
462 the Rem-Sho typewriter to your friends, or any of them, for $85. Is that correct?

A. No, sir, he had not authorized me to sell the machine at all.

X-Q. 86. Well, what did he tell you he might do, if he did not authorize you?

A. He did not say that I might do anything, but that he might be able to sell a machine for $85.

X-Q. 87. But he told you you might solicit orders, didn't he, among your friends?

A. He did not say that I could solicit orders, but asked me to try and interest some of my friends in the machine and send them to him.

X-Q. 88. Did you ever comply with his request in any way? 463

A. I never made any special effort, but said to several people whom I knew were looking for typewriters that it would be a good idea for them to examine the Rem-Sho before purchasing.

X-Q. 89. I understand you to say that you had a Remington No. 2 typewriter in your office or in the office occupied by Bryce & Lipscomb and also by Remington-Sholes Company at the time the lady and gentleman called upon you, as you have stated. That is the fact, is it not?

A. Yes, sir; Bryce & Lipscomb had a No. 2 typewriter. 464

X-Q. 90. Did you mention the fact in that interview that the Remington-Sholes machine or Rem-Sho machine had all good points of the old Remington and some new ones, or that in substance?

A. I stated that the Rem-Sho machine had all the good points that the Remington had and several points which the Remington did not have.

X-Q. 91. At the time this lady and gentleman called, did not the gentleman say in words or substance he called to look at a typewriter? 465

A. I cannot remember exactly what he said, but I think so.

X-Q. 92. And did you invite the lady and gentleman to step over to the further part of the room where the Rem-Sho machines were or where they were exhibited?

A. I stated that Mr. Sholes was out of town, and told the parties I would show them all I could about the typewriter.

X-Q. 93. And is it a fact that you did show them the Remington-Sholes machine or Rem-Sho typewriter and explain it to them and tell them what you knew about it?

466 A. I showed them the typewriter and explained to them as best I could its working.

X-Q. 94. Did you know or did you at any time learn who the Remington was who was in or connected with the Remington-Sholes Company?

A. No, sir.

X-Q. 95. Had Mr. Sholes ever made any reference to the parties who manufactured the Remington-Sholes machine to you?

A. He simply stated that it was manufactured by the Remington-Sholes Company, but I cannot remember as to whether he told me the individuals connected there-
467 with.

X-Q. 96. Then he never told you and you never learned the original of this name Rem-Sho; is this so?

A. I think I heard the matter explained to Mr. Bryce as to the inventor of it, but cannot remember the conversation.

X-Q. 97. When was that conversation between Mr. Sholes and Mr. Bryce referred to in your last answer which you do not now remember?

A. I cannot say that I remember the time.

X-Q. 98. But you do remember the fact that such
468 a conversation occurred and which you heard during the time that the Rem-Sho Company occupied a portion of the office of Bryce & Lipscomb; is that so?

A. I remember the conversation being held and that is about all.

X-Q. 99. Do you remember whether or not Mr. Sholes told Mr. Bryce as to who manufactured the Rem-Sho typewriter?

A. No, sir, I do not.

X-Q. 100. And, if I understand you, you do not now recall any portion of that conversation?

A. No, sir, I do not.

X-Q. 101. I call your attention to "Defendant's Exhibit Rem-Sho Catalogue Nos. 2 and 3," and to page 24 thereof, and ask you whether you have ever read what is contained on said page either in this catalogue or seen or read the same in any other catalogue during the time that the Remington-Sholes Company had its office with Bryce & Lipscomb in the City of Washington. 469

A. I cannot say that I remember in particular, but I do think that I have read either in this or in some other catalogue that the company had no connection whatever with the Remington Standard Company.

X-Q. 102. Well, now, have you ever read or seen before any statement as to Mr. Remington which you find on said page, and his connection with the Rem-Sho typewriter? 470

A. I cannot recall that I have.

X-Q. 103. If there was a similar page or article in the catalogues which were in the office of the Remington-Sholes Company at the time it had its office with Bryce & Lipscomb, you must have read it or seen it; is not that so?

A. I do not deny that I might have seen or read it, but I cannot recall it just now.

X-Q. 104. Do you not think that it is highly probable that you did read it, although you do not now remember it? 471

A. If it was in the catalogue, I might have hurriedly read it, but I paid no special attention to it.

X-Q. 105. How do you know you paid no attention to it?

A. I said I paid no special attention to it, and for that reason it was not impressed on my mind.

X-Q. 106. But you may have read it, notwithstanding, and forgotten it; is not that so?

A. I might have read it and forgotten it, as you say.

472 X-Q. 107. And it is a fact, is it not, that regards things we read and conversations we have in which we have no special interest and no special reason for remembering, we forget. Is not that so?

A. Such is often the case.

X-Q. 108. Do you know how many machines Frank L. Sholes, as the agent of the Remington-Sholes Company, sold while he had his office with Bryce & Lipscomb?

A. No, sir; I do not.

X-Q. 109. Do you know that he sold any?

473 The question is objected to as immaterial and irrelevant.

A. I simply heard that he had sold some machines.

X-Q. 110. Did you ever sell any on which you got a commission?

A. No, sir; I did not.

X-Q. 111. Did you endeavor to sell any otherwise than you have previously stated?

A. No, sir; I did not.

J. L. RUSSELL.

474 FRANK L. SHOLES, a witness produced on behalf of defendant, having been first duly sworn, testified as follows:

Q. 1. State your name, age, residence and occupation.

A. Frank L. Sholes; twenty-five; 1819 Ontario street, Philadelphia; dealer in typewriter and typewriter supplies.

Q. 2. Were you ever in the employ of the Howe Scale Company or of the Remington-Sholes Company?

A. I was in the employ of the Remington-Sholes Company.

Q. 3. During what period?

A. January, 1895, until March 1, 1900.

Q. 4. During the time or any part thereof that you were employed by the Remington-Sholes Company, did said company have an office in the City of Washington? 475

A. They did.

Q. 5. Where was said office located?

A. No. 612 14th street, N. W.

Q. 6. Who, if any one, occupied the office at 612 14th street, N. W., Washington, D. C., during the time said office was occupied as an office of the Remington-Sholes Company?

A. Messrs. Bryce & Lipscomb had the office of whom the Remington-Sholes Company rented a portion.

Q. 7. Who, if any one besides yourself, represented the Remington-Sholes Company at its Washington office, 612 14th street? 476

A. No one except myself.

Q. 8. State whether or not, during the year 1898, the Remington-Sholes Company had any other agent or employee in the City of Washington besides yourself?

A. While I was here there was no other representative in Washington. A few months before I came Mr. Baldwin and Mr. Trenholm were here regarding an award to be secured to the department of justice. Outside of these two, to the best of my knowledge and recollection, there was no other representative of the Remington-Sholes Company in Washington during the entire year of 1898. 477

Q. 9. When did you take charge of the Washington office of the Remington-Sholes Company?

A. August 1, 1898.

Q. 10. Where was that office located then?

A. 612 14th street, N. W.

Q. 11. How long did the Remington-Sholes Company maintain its office at 612 14th street?

A. I left the city September 23rd, when the office

478 was virtually closed. September 23, 1898. The machines and fixtures and furniture were still left in the building, and were there until some time in November, 1898.

Q. 12. Did the Remington-Sholes Company have any representative in Washington after September 23, 1898?

A. Not during that year.

Q. 13. During the time that the Remington-Sholes Company occupied the office at 612 14th street in common with Messrs. Bryce & Lipscomb, what persons were employees of said office?

479 A. By myself; no one was employed; by Messrs. Bryce & Lipscomb, J. Leslie Russell.

Q. 14. Did you ever employ Mr. J. Leslie Russell in any manner, either for yourself or on behalf of the Remington-Sholes Company or of the Howe Scale Company?

A. I did not.

Q. 15. Did you ever authorize him or was he ever authorized by you or the Remington-Sholes Company or the Howe Scale Company to act for you or either of the companies mentioned during your absence or any other time, in connection with the sale of Remington-Sholes

480 typewriters?

A. He was never authorized by myself to act for either of the above companies or for myself.

Q. 16. State if you recall the character of the sign that was used in connection with the sale of Rem-Sho typewriters at its office, 612 14th street.

A. "Rem-Sho Typewriter, Manufactured by the Remington-Sholes Company, Chicago, Ills."

Q. 17. Was this sign prominently displayed in the office of the Remington-Sholes Company?

A. The sign was on the outside of the building on 14th street.

Q. 18. During the time that the office of the Remington-Sholes Company was at 612 14th street, were any catalogues exhibited in said office, and if so, to what extent and in what manner? 481

A. The catalogues were exhibited; they were on the top of my desk and were there for distribution, or for the people who came into the office to take one if they so desired.

Q. 19. By whom were these catalogues furnished to you?

A. The Remington-Sholes Company, Chicago, Ills.

Q. 20. I call your attention to "Defendant's Exhibit Rem-Sho Catalogue Nos. 2 and 3," and ask you to state how it compares with the catalogues used by you while in charge of the office of the Remington-Sholes Company at 612 14th street, Washington. 482

A. It looks exactly like the catalogue which I used; in fact, I think they are identical.

Q. 21. To what extent did you use these catalogues and in what way?

A. I presume I distributed 150 to 200 of them and used them to make demonstrations when I called to solicit an order. I also mailed them to the district judges, attorneys, assistant attorneys throughout the United States. 483

Q. 22. During what period of time did you distribute these catalogues?

A. August and September, 1898.

Q. 23. How were the machines marked that were offered for sale by you at the office of the Remington-Sholes Company, 612 14th street?

A. They were marked "manufactured by Remington-Sholes Co. Chicago, Ill. U. S. A."

Adjourned to meet at 10 A. M., April 6, 1900.

484 Met pursuant to adjournment. Parties present as before.

Direct examination of Mr. Sholes continued:

Q. 24. Did you ever authorize or request J. Leslie Russell or anyone else to attend to the business of the Remington-Sholes Company, or your business during your absence from the Washington office, or to take charge of said office in your absence, or to make any statements or representations respecting Remington-Sholes machines, or to sell such machines in your absence?

485 A. I did not. Sometimes upon leaving the office I would ask him to say to anyone who called to see me that I would return at a certain time.

Q. 25. Was any person authorized by anyone to act in such matters during your absence from the Washington office of the Remington-Sholes Company?

A. There was not.

Q. 26. Did you ever have a conversation at the Washington office of the Remington-Sholes Company, 612 14th street, with a man who suggested to you that he might be able to influence an order through the Army Department or any other branch of the government service for a Remington machine, and who asked you if it would be entirely safe to fill such order with a Remington-Sholes machine?

486 A. I remember having had such a conversation.

Q. 27. When and where did such conversation occur?

A. It occurred some time between the 15th and 23rd of September, 1898, at No. 612 14th street, N. W., Washington, D. C.

Q. 28. State fully the circumstances connected with said conversation.

A. A gentleman came into the office, representing 487
himself as Charles T. Francis, of Norfolk, Va., saying that he was an instructor at the Naval Academy, and that he had in his possession a requisition for a No. 6 Remington Standard typewriter. He told me he was impressed by the Rem-Sho machine, I having explained it to him a few moments before this, and asked me would I fill this requisition with a Rem-Sho machine, and that if I made the bill to read Remington No. 6 I would get my money and he would get the machine and we would both be satisfied. This I most positively refused to do. I told him that if he really desired to get a 488
Rem-Sho machine he could undoubtedly have the requisition changed to read Rem-Sho. He said that he had had a hard time in getting a requisition for a new machine, and that he was afraid that if he went back to have it changed there might be some hitch. He thereupon left me, saying that if I decided to accept the offer to write him care the general delivery, Norfolk, Va., which I never did, nor have I ever seen the man since.

Q. 29. Did you ever have any other conversation with such person or with any other person who suggested that he might be able to influence an order through the Army Department or through any other de- 489
partment of the government service for a Remington machine, and who asked if it would be entirely safe to fill the order with a Remington-Sholes machine? I mean did you ever have any other conversation with anyone who made this inquiry or any inquiry of like import?

A. This was the only conversation I ever had regarding a matter of this kind.

Q. 30. Did you tell such person that you would not hesitate for one moment about filling the order with a Remington-Sholes machine if he could obtain it?

490 A. On the contrary, I refused to do any such thing, for if I had agreed to do so the machine would have been sold and delivered.

Q. 31. Did you state to the person with whom you had such conversation that you would pay him $10 or any sum of money for his influence in having the orders sent to you?

A. In regard to the above order I never agreed to accept it and consequently I could not have offered him any money for what I did not want. We did have some conversation regarding the sale of machines in Norfolk, he telling me that he knew Edward S. Evans, District
491 Attorney at Norfolk, who used a Rem-Sho machine, and he thought he could make a few sales in that vicinity. I told him this was all well and good and go ahead and I would pay him as commission either $10 or ten per cent., I cannot remember which.

Q. 32. Did you give to the person with whom you had said conversation any catalogue or other advertising matter relating to the Remington-Sholes machine?

A. I presume I did, as I made it a rule to hand everybody a catalogue and what small matter I had there every time they called.

492 Q. 33. Did you tell such person with whom you had said conversation anything regarding the history of the Rem-Sho machine or of the Remington-Sholes Company?

A. Yes; I did.

Q. 34. What did you tell him in this connection?

A. I told him Mr. Zalmon G. Sholes, the inventor of the Remington-Sholes machine, was a son of C. L. Sholes, who was the principal inventor of the old Sholes & Glidden typewriter, from which the Remington had been developed. I stated that Mr. Remington's father was of the old firm of E. Remington & Sons, who orig-

inally made the typewriters and from whom they de- 493
rived their name, and that the two had formed a company and were now manufacturing the Rem-Sho machine at Chicago, Ill., and I might say that the gentleman looked at me as though he knew all that I was telling him.

Q. 35. Are you a grandson of C. Latham Sholes?

A. I am.

Q. 36. And are you related to Zalmon G. Sholes, whom you have mentioned in a former answer?

A. Zalmon G. Sholes is my uncle, and I may have mentioned this when I was giving the explanation mentioned above to the gentleman who called at the office. 494

Q. 37. Did you tell the person who called at the office, as mentioned in your preceding answers, that your uncle was the original inventor and had been the manufacturer of the Remington machine?

A. I never made any such statement.

Q. 38. Did you tell such person that your uncle had combined with the Remington people and that together they were making the Remington-Sholes typewriter?

A. I did not. I told him that Mr. Sholes, whose father originally invented the Sholes & Glidden machine, and Mr. Remington, whose father was of the firm 495
of E. Remington & Sons, original manufacturers of the machine, had formed a company and were manufacturing the Rem-Sho typewriter at Chicago, Ills.

Q. 39. Did you tell him that the Rem-Sho machine, or the machine that you were endeavoring to sell to him, was the only Remington machine on the market?

A. I did not, but I did tell him that the Rem-Sho machine was the only typewriter on the market now made by a Remington, meaning F. Remington of the Remington-Sholes Company.

Q. 40. Did you ever tell anyone that your uncle was

496 the original inventor and had been the manufacturer of the Remington machine?

A. I did not.

Q. 41. Did you ever tell anyone that your uncle had combined with the Remington people, and that together they were making the Remington-Sholes typewriter?

A. I did not.

Q. 42. Did you ever tell anyone that the Rem-Sho machine was the only Remington machine on the market?

A. I did not.

Q. 43. Did you explain to the person who called at
497 your office, as mentioned in your answer to direct question 28, the construction and operation of the Remington-Sholes machine, and if so, to what extent and in what manner?

A. There was a machine on the desk beside my desk —I mean a Rem-Sho machine; we both sat down to the desk, and I explained the machine to him in substance as follows: I showed him that we had the universal or standard keyboard, the rigid carriage, the shifting basket; I explained the automatic locking of the basket, raising of the platen, interchanging of the carriages, lock-
498 ing of the shifts for all caps, object of the metal key levers, explained to him the type-bar disk, type-bars, hangers, etc., the escapement, the ribbon movement, and then explained the advantages of the bronze over that of Japan.

Q. 44. Did you explain the machine to him by comparing it with any other machine?

A. I think there were comparisons drawn between the Rem-Sho and the Remington Standard.

Q. 45. Did he seem familiar with typewriting machines or was his conversation such as to indicate a familiarity with the subject of typewriting machines?

Question is objected to by complainant's counsel as incompetent and improper, because it calls for the opinion or conclusion of witness, and not for what was said and done. 499

A. I took for granted that he understood typewriting machines, because he told me when he introduced himself that he was an instructor or had been an instructor; I do not remember which, in stenography and typewriting.

Q. 46. During such conversation, was anything said as to who manufactured the Remington typewriter, or was the name of the manufacturer of the Remington typewriter mentioned, and if so, by whom? 500

A. To the best of my knowledge and recollection, the names of the manufacturers of the Remington Standard were not mentioned.

Q. 47. Do you recall whether or not you showed to him a Remington Standard No. 2 typewriter?

A. As there was standing within a few feet of where we sat, he must have seen it; whether I showed it to him or not, I cannot recall.

Q. 48. Did you ever have any instructions from the Remington-Sholes Company in regard to the sale of Rem-Sho typewriters, and if so, state what said instructions were, and whether any of them were in writing? 501

Complainant's counsel objects to the question on the ground that the same calls for evidence immaterial and irrelevant, and not competent in this case.

A. I had instructions, but no particular instructions from any particular person, I having been with the company almost from its conception, knew the machine thoroughly, and I presumed I did not need any instructions. Although I had always been told not to confound the name Remington-Sholes with that of the Remington

502 Standard. To my best knowledge I never had any written instructions.

Q. 49. Did you ever have occasion to write to any of the United States district attorneys in regard to the Remington-Sholes or Rem-Sho typewriter, and, if so, about when?

A. I wrote to all the district attorneys, and on several occasions wrote to them in answer to their letters. This was between the first of August and the first of December, 1898.

Q. 50. Did you ever write a letter to Harry E. Davis, Esq., U. S. District Attorney, Washington, D. C.?

503 A. I did.

Q. 51. When was such letter written, and what became of it?

A. The letter was written October 7, 1898, and mailed to Mr. Davis.

Q. 52. Upon what kind of a letter-sheet was said letter written? I mean what kind of a printed heading did the letter-sheet have?

A. It was the letter-head I was using in the Washington office at that time; it was the regular stock head of the Remington-Sholes Company, and had printed on

504 it "Washington Office, 612 14th st., N. W." The letter-head had a cut of the Rem-Sho typewriter printed in brown, the left-hand side of the cut in large open-face letters, R E M; on the right-hand side of the cut, same style of letters and the same color of ink, S H O, and below the cut in smaller type, but of the same style, the word "typewriter." On the bottom of the sheet in brown also were the words "We carry a full line of typewriter supplies." At the top of the page in black and extending clear across was the lettering "C. N. Fay, President, Franklin H. Head, Vice-President, F. Remington, General Manager, J. E. Paulsen, Secretary

and Treasurer." Imprinted over the cut and the words 505
"Rem-Sho Typewriter" in black ink were the words "manufactured by Remington-Sholes Company, main office and factory 127 Rees Street, Chicago." Just below that in black were the words "branch office, 612 14th St., N. W., Washington, D. C."

Q. 53. Have you seen the original letter which you say you wrote and mailed to Mr. Davis since it was mailed to him?

A. I have not, and I do not know what became of the letter.

Q. 54. Can you produce a copy of the letter which you say you wrote to Mr. H. B. Davis, October 7, 1898? 506

A. I can; here it is.

Q. 55. In what book is this copy contained, and by whom was the copy made?

A. The copy is in my regular Washington office copy-book, and the copy was made by my stenographer at Philadelphia.

Q. 56. Will you please read to the Notary the letter-press copy of the letter to Mr. Harry E. Davis as the same appears upon page 174 of your copy-book?

A. "October 7th, 1898.

"HARRY E. DAVIS, ESQ., 507
"U. S. District Attorney,
"Washington, D. C.

"*Dear Sir*:—We received award for furnishing typewriters for the Dept. of Justice for the coming year. We take pleasure in sending you under separate cover catalogue.

"Should you be in need of anything in this line, we will be pleased to receive your order through the Dept. of Justice.

"Yours very truly,
"REMINGTON SHOLES COMPANY,
"F. L. SHOLES, Manager."

508 It is admitted by complainant's counsel that the foregoing is a true copy from the letter-press copy-book referred to by the witness, and may be used with the same force and effect as if said copy-book had been offered in evidence.

Q. 57. Did you ever write any other letter to Henry E. Davis, United States District Attorney?

A. I did not.

Q. 58. State whether the Remington-Sholes Company had an exhibit at the National Export Exposition that was held in the City of Philadelphia in the fall of
509 the year 1899?

A. They did.

Q. 59. Who was in charge of that exhibit?

A. I was.

Q. 60. State what signs, if any, were exhibited at the booth occupied by the exhibit of the Remington-Sholes Company.

A. There was one large gold and maroon sign lettered "Rem-Sho Typewriter, manufactured by the Remington Sholes Company, Chicago, Ills.;" hanging below this sign was another with the lettering "Machines furnished in all languages;" there
510 was another sign of the same character lettered on the side "Rem-Sho typewriter;" there was a white card sign lettered "Our foreign agencies," and then were given the different cities in Europe and the balance of the world outside of the United States in which the Remington-Sholes Company had offices. Then there was a small card sign marked "Note the interchangeable Wide Carriage," and another card sign marked "Rem-Sho tabulater;" there was a small card sign marked "History Repeats Itself." In substance, this last sign said that the Rem-Sho machine was invented and manufactured by the sons of the original inventor

and manufacturer of this machine, meaning an old Sholes & Glidden typewriter manufactured by the Western General Electric Company, of Chicago, Ills., upon which the sign mentioned was displayed. That, I believe, was all of the signs at the Exposition. 511

Q. 61. About what was the size of the largest signs that were displayed, and about what was the size of the sign displayed on the old Sholes & Glidden machine?

A. The largest sign displayed was about ten feet long and three feet wide, or four feet wide. The card sign on the machine was about 12x14 inches.

Q. 62. What advertising material, if any, was displayed or given out to the public at the booth of the Remington-Sholes Company exhibit? 512

A. Catalogues, folders, little pasteboard cards, a larger book on the same order as the catalogue having impressions of engraved plates of the writing of the Rem-Sho machine in foreign languages.

Q. 63. Where were those catalogues and other advertising material received from?

A. The Remington-Sholes Company, in Chicago, Ills.

Q. 64. Have you ever seen on the market a machine like that exhibited in the booth of the Remington-Sholes Company, and upon which machine you say there was a sign bearing the words "History Repeats Itself"? 513

A. Not as a new machine. I have seen them in second-hand stores as advertisements.

Q. 65. Have you ever seen such machines offered for sale as operative machines?

A. I have not.

Q. 66. Did you ever meet a colored man named Johnson, who is an official reporter or a committee reporter of the House of Representatives in this city?

A. I have.

514 Q. 67. When did you meet him first?

Question is objected to as immaterial and irrelevant, as Mr. Johnson has not been called as a witness in this case and has not testified in this case for the complainant or anybody else.

A. Between the 1st of August and the 23rd of September, 1898.

Q. 68. State, if you know, what are Mr. Johnson's initials?

A. J. E. Johnson.

Q. 69. State the circumstances under which you
515 first met Mr. Johnson and where you first met him.

Same objection as last, also as calling for hearsay evidence and the statements of a person who is in no wise connected with this suit or has been as a witness or otherwise, and that the evidence called for by the question is not competent or in rebuttal of any evidence which the complainant has offered in this case.

A. Johnson called at my office, 612 14th street, in regard to the Rem-Sho typewriter; he introduced himself and left his card.

516 Q. 70. State when you next met Mr. Johnson and state the circumstances under which you met him, and who was present at the time.

Same objection as last.

A. The next time I met Mr. Johnson was yesterday. We called at the Capitol Building yesterday and saw Mr. Johnson; there was present with me Mr. Fisher.

Q. 71. State what occurred at the interview yesterday between yourself, Mr. Johnson and myself.

A. Mr. Fisher told Mr. Johnson that he called to see him regarding the matter of a law suit against the

Remington-Sholes Company, read to him a portion of the statement of Mr. Crean and asked him regarding it. Mr. Johnson said in substance as follows: "I was in Baltimore and saw the Remington-Sholes machine in the window of a store and went in to look at it; I had it explained to me and I was impressed by it; said I was going to try it;" stated that he received the machine on trial but they had not sent him a new machine and he sent it back. Mr. Fisher asked Mr. Johnson then if he believed he was ordering a Remington typewriter when he ordered the Remington-Sholes. Mr. Johnson said: "I would be a fool to say that;" that "I have had Remington typewriters for twenty years, more or less, and I would be a fool to say that I did not know the Rem-Sho was not a Remington;" and he said the reason why he sent the Rem-Sho back was because they did not send him a new machine. 517 518

Complainant's counsel moves to strike out the answer of the witness because the evidence is hearsay and secondary and the statements of a person who has not been a witness in this case for the complainant or defendant, and who is not a party to this action and has no interest whatever in the event thereof.

Counsel for defendant replies that complainant's witness, Mr. Thomas F. Crean, having volunteered in the course of his deposition to state what he alleged to be a conversation between himself and Mr. Johnson with respect to the Rem-Sho machine, and as to Mr. Johnson's having been deceived or led to believe that in ordering the Rem-Sho machine he was obtaining a genuine Remington, counsel submits that the testimony offered by this witness is certainly as of high character as that offered by complainant through its witness Mr. Crean. 519

520 Q. 72. Did Mr. Johnson say anything in your presence as to who showed him the machine, the Rem-Sho machine, in Baltimore, and if so, what did he say?

Same objection as to the last question and answer and the same motion.

A. He said that the machine was shown him by a man who happened to be in the office, but who had no connection with the Remington-Sholes Company; he was there and they talked the machine over together; this party had a catalogue in his hand and gave it to him.

521 Q. 73. What kind of a catalogue did Mr. Johnson say that the party had in his hand while they were talking the machine over together, and afterwards gave to him?

A. A catalogue of the Rem-Sho machine.

Q. 74. Did you hear counsel for the defendant read to Mr. Johnson the following extract from the deposition of Mr. Thomas F. Crean, viz.: "He (Johnson) also told me that after having looked the Remington-Sholes machine over, notwithstanding his use of the Remington machine for twenty years, that he was completely misled and deceived because of such use of the
522 word Remington"?

Same objection; same motion.

A. I did.

Q. 75. State what Mr. Johnson said after this matter was read to him.

Same objection and same motion.

A. He said that he had talked with a man by the name of Fracker and that what Mr. Fisher read to him was Fracker's language and not his own. He also said that he would be a fool to make such a statement as that when he knew better.

Q. 76. Did Mr. Johnson state in your presence whether he had ever requested Mr. Fracker to make any statement in fairness to all parties, and if so, state what Mr. Johnson said in this connection? 523

Same objection; same motion.

A. Mr. Johnson said that he told Mr. Fracker that the man who showed him the machine in Baltimore was not a representative of the Remington-Sholes Company, and he further said that this statement should be made in fairness to all parties, and so told Mr. Fracker at the time.

Q. 77. When did you next see Mr. Johnson after your interview of yesterday? 524

Same objection; same motion.

A. I saw him to-day.

Q. 78. State what occurred at the interview to-day with Mr. Johnson.

Same objection; same motion.

A. Mr. Fisher showed him a letter and asked him to sign it; this Mr. Johnson would not do to-day. He read it through and said that every word of it was true.

Q. 79. What reason did Mr. Johnson state in your presence for his refusal to sign the letter that was shown to him by me? 525

Same objection; same motion.

A. He said in the first place he did not want to be drawn into the matter, and that he would not sign this statement unless he was requested to by the Remington-Sholes Company from Chicago.

Q. 80. Did you hear me request Mr. Johnson to appear as a witness in this case, and if so, state fully what reply Mr. Johnson made to such request?

Same objection; same motion.

526 A. I did hear you request Mr. Johnson to appear as a witness; this he said he would not do, and if he was subpœnaed he would get on the stand and refuse to say anything. He said it was ridiculous to try to make him think he had been deceived.

Q. 81. Can you produce the statement that was read to and by Mr. Johnson in your presence to-day?

Same objection; same motion.

A. I can, and here it is.

The statement referred to by the witness in his last answer is offered in evidence and marked "De-

527 fendant's Exhibit Johnson Unsigned Statement."

Complainant's counsel moves to strike out so-called Johnson's unsigned statement from the record of this case as hearsay evidence and upon the ground that it is an unsworn statement and declaration of a third person and one who is neither a party to this case or interested in it and one who has not been a witness in this suit.

Q. 82. Who was present at the time this unsigned statement was read to and by Mr. Johnson?

Same objection as last; same motion.

528 A. Mr. Fisher and Mr. Page and myself.

Q. 83. State who Mr. Page is, if you know.

A. Mr. Page is the stenographer of the Committee on Accounts, House of Representatives.

*Cross-Examination by Mr. Donnelly.*

X-Q. 84. You have stated in your direct testimony that you entered the employ of the Remington-Sholes Company in January, 1895. Please state what the character of the service was and where such service was performed during the year 1895.

A. I was a salesman in their Chicago office at 138 Monroe street.

X-Q. 85. And what typewriting machine, if any, were you then engaged in selling or offering for sale? 529

A. The Remington-Sholes typewriter.

X-Q. 86. And how long did you continue in the employ of the Remington-Sholes Company in their Chicago office as salesman?

A. Until the 11th of May of that year.

X-Q. 87. Where next did you engage in the service of the Remington-Sholes Company as salesman or otherwise?

A. I went into the factory.

X-Q. 88. Where was the factory located then? 530

A. 127 Rees street, Chicago.

X-Q. 89. About how long did you continue in the factory of the Remington-Sholes Company?

A. When I said that I left their employ as salesman May 11th I was mistaken; I left the Chicago office as salesman in March and went into the factory. I left the factory May 11th.

X-Q. 90. Where next and when did you engage in the service of the Remington-Sholes Company?

A. I went to Grand Rapids, Mich.

X-Q. 91. And how long did you remain at Grand Rapids, Mich., and during what year or years and what was the character of the service that you did there for the Remington-Sholes Company? 531

A. I was in Grand Rapids, Mich., until September of 1897. I sold Remington-Sholes machines and kept those I had sold in repair.

X-Q. 92. Please state where you next went into the service of the Remington-Sholes Company and the length of such service and the character of it.

A. I came to Philadelphia in April, 1898, as repair man for the Remington-Sholes Company at its office with the Howe Scale Company, No. 508 Market street.

532 X-Q. 93. And remained there how long?

A. Until the 1st of August, 1898.

X-Q. 94. And from there where did you go into the service of the Remington-Sholes Company, and what was the character of the service performed for said company?

A. I came to Washington as manager of the Remington-Sholes Company's office.

X-Q. 95. And you remained in Washington as such manager up to what time?

A. I remained in Washington until September 23rd of 1898.

533 X-Q. 96. And during that time did you have charge of any other or look after the business of any other office of the Remington-Sholes Company, and if so, what office or offices of said company?

A. I looked after the Washington office only.

X-Q. 97. During the year 1898 was there any office in the City of Baltimore where the Remington-Sholes machine was kept for sale or sold, and if you know, kindly state where the office was located in Baltimore?

A. The Tribune Cycle Company, 105 W. Fayette street, Baltimore, were dealers of the Remington-Sholes

534 typewriter.

X-Q. 98. From whom did they obtain their machines?

A. The Philadelphia office.

X-Q. 99. And were they dealers in the Rem-Sho typewriter during the year 1898?

A. A portion of the year; yes.

X-Q. 100. State up to what time they were dealers of the Remington-Sholes typewriter.

A. I do not think it was after the 1st of December, although I believe they had some machines on hand which they disposed of after that.

X-Q. 101. Did the Tribune Cycle Company have 535
an office in Philadelphia during the year 1898, and if so, where was it located?

A. The Tribune Cycle Company had an office in Baltimore only.

X-Q. 102. Did you enter the service of the Remington-Sholes Company at the time of its organization or after it was organized?

A. After it was organized.

X-Q. 103. Did you enter the service of the Remington-Sholes Company before or after the Remington-Sholes machine was put upon the market?

A. After. 536

X-Q. 104. About how long after the machine was put upon the market?

A. I do not remember just when the machine was put upon the market; I guess it was about a year before.

X-Q. 105. Who manufactured the Remington-Sholes machine when you first began to sell such machine, and when you worked in the factory of the Remington-Sholes Company in 1895, as you have stated?

A. The Remington-Sholes Typewriter Company.

X-Q. 106. And who has manufactured the Remington-Sholes machine ever since you entered into the service in January, 1895? 537

A. The Remington-Sholes Typewriter Company and the Remington-Sholes Company.

X-Q. 107. When did the Remington-Sholes Company manufacture the Remington-Sholes machine?

A. Up to or about June, 1897.

X-Q. 108. What became of the Remington-Sholes Typewriter Company in June, 1897, or why did it cease to manufacture the Remington-Sholes typewriter, if it did cease?

Counsel for defendant objects to the question as

538 immaterial and irrelevant and as not being proper cross-examination, as it calls for matter having no connection with the witness' direct examination.

A. The Remington-Sholes Typewriter Company was reorganized into the Remington-Sholes Company.

X-Q. 109. Do you know why it was reorganized?

Same objection.

A. I do not.

X-Q. 110. But you do know that the Remington-Sholes Typewriter Company ceased to do business in 1897, as you have stated, and was reorganized into the
539 Remington-Sholes Company? Is that so?

A. Yes.

X-Q. 111. And after the reorganization into the Remington-Sholes Company, who manufactured all of the Remington-Sholes machines, or Rem-Sho machines, during the time you were connected with the reorganized company?

A. Remington-Sholes Company, Chicago, Ills.

X-Q. 112. Has Franklin Remington, who is connected, or has been connected with the Remington-Sholes Typewriter Company, or the Remington-Sholes
540 Company, ever manufactured any Remington-Sholes machines, or Rem-Sho machines, to your knowledge? I mean personally.

A. Mr. Remington has had an active interest in the business ever since I have been with the company.

X-Q. 113. You have not answered my question, and therefore I repeat it.

A. I never saw him working at the bench, but I have seen him around the factories instructing the men and trying the parts, etc.

X-Q. 114. Will you please answer my question categorically?

A. If you mean did he sit down and build the ma- 541
chines from top to bottom, to my knowledge he never has.

X-Q. 115. Has Franklin Remington ever been, to your knowledge, the manufacturer of the Remington-Sholes machine, or the Rem-Sho machine, so-called?

A. Yes, sir; he has.

X-Q. 116. Do you mean to be understood to tell the court that Franklin Remington has been the manufacturer of the Remington-Sholes machine, or Rem-Sho machine?

A. Yes, in this sense: He was the active man of 542
the Remington-Sholes Typewriter Company, and as general manager of both the Remington-Sholes typewriter and the Remington-Sholes Company he has given his personal and undivided attention to the business ever since I have been with the company.

X-Q. 117. Has Franklin Remington been anything else than an officer or employé of the Remington-Sholes Typewriter Company, or Remington-Sholes Company, since you were connected with either of those companies?

A. Not to my knowledge.

X-Q. 118. Now is'nt it true as a fact that all Rem- 543
ington-Sholes typewriters and Rem-Sho typewriters have been manufactured by and on behalf of those two companies hitherto named?

A. As far as I know of.

X-Q. 119. Then is it not true that excepting as an officer or general manager of the Remington-Sholes Typewriter Company and the Remington-Sholes Company, Franklin Remington has never had anything to do with the actual manufacture of the Remington-Sholes typewriter, or Rem-Sho typewriter, so called?

A. Not to my knowledge.

544 X-Q. 120. Who was the superintendent of the Remington-Sholes factory during the existence of the Remington-Sholes Typewriter Company?

A. Zalmon G. Sholes.

X-Q. 121. And he acted as an officer and employé of the Remington-Sholes Typewriter Company. Is'nt that so?

A. It is.

X-Q. 122. Who has been the superintendent of the factory of the Remington-Sholes Company since that company was organized?

545 A. I do not know whether they call them superintendents or foremans, but his name was Henry Hochklassen.

X-Q. 123. Who has been and is at present the president of the Remington-Sholes Company?

A. Mr. C. N. Fay.

X-Q. 124. Was he also the president of the Remington-Sholes Typewriter Company?

A. He was.

X-Q. 125. What has been the character of the duties which Mr. Fay has performed during the time which he has been president of the Remington-Sholes

546 Company, and what were his duties, so far as you observed, when he was president of the Remington-Sholes Typewriter Company?

A. I never had much of an opportunity to observe just what Mr. Fay did, but I do know that he was taking a very active interest in the company, and I presume as president of the company he did what all presidents generally do.

X-Q. 126. Has not Mr. Fay from time to time had more or less to do with the management and direction of the Remington-Sholes Typewriter Company's factory and the Remington-Sholes Company's factory?

A. Since the No. 2 model of Rem-Sho came on the market I believe Mr. Fay has been very active, and I think that model was brought out under his personal supervision. 547

X-Q. 127. And what period of time does that cover?

A. That I cannot say.

X-Q. 128. Has Mr. Fay been active in directing the factory ever since the Remington-Sholes Typewriter Company was reorganized as the Remington-Sholes Company?

A. I believe he has.

X-Q. 129. And isn't it true as a fact that Mr. Fay has directed and managed the factory himself since the Remington-Sholes Typewriter Company was reorganized? 548

A. Mr. Fay has been active in directing the factory, but has been to Europe several times in that period, when Mr. Remington took his place and directed and carried on the business.

X-Q. 130. How much of this time has Franklin Remington spent in Europe and spent outside of the factory in traveling about the country since the Remington-Sholes Typewriter Company reorganized?

A. That I cannot tell. I have no means of knowing. 549

X-Q. 131. Who, if anybody, to your knowledge, has had charge of the factory, of the agency business, or the business relating to the sales of the Remington-Sholes typewriter, or Rem-Sho typewriter, since you have been connected with that company?

A. Mr. Zalmon G. Sholes was the manager of the sales department, and since that time there has been three or four different men looking after the outside agency business; the ones I remember are Mr. Baldwin, Hitchcock, Seddon, and myself.

X-Q. 132. Is it not true that Mr. Remington has

550 spent a great deal of his time outside of the factory since the Remington-Sholes Typewriter Company and the Remington-Sholes Company were organized?

The question is objected to by counsel for defendant for the reason that the matter inquired of is immaterial and irrelevant, for the further reason that it is not proper cross-examination, and for the still further reason that it does not appear that this witness has been so situated as to enable him to keep informed as to Mr. Remington's movements.

A. I have no means of knowing, this being in Philadelphia.

551 X-Q. 133. Was there a business office connected with the factory of the Remington-Sholes Typewriter Company, and is there one connected with the Remington-Sholes Company? I mean separate and apart from that portion of the factory where the manufacture of machines is carried on.

A. There was and is a business office in the factory.

X-Q. 134. And is it not true, so far as you know or have observed, that Remington when at the factory spent his time principally in or about the business office and not in the manufacture department?

552 A. So far as my knowledge goes, yes.

X-Q. 135. Did the Remington-Sholes Typewriter Company have and has the Remington-Sholes Company had a general business office in Chicago separate and apart from its office in the factory building?

A. It has an office down town for selling its goods, but I do not think I would call it a business office, that is, of the factory business.

X-Q. 136. And did Remington spend any portion of his time at the general business office down town, so far as you know or have observed?

A. Not in any official way, but just dropped in the office and talked.

X-Q. 137. Who was the inventor of the Remington-Sholes or Rem-Sho typewriter, so far as you know? 553

A. Zalmon G. Sholes.

X-Q. 138. Did you ever see the original model or prototype of the Remington-Sholes typewriter invented by Zalmon G. Sholes?

Defendant's counsel objects to this question, and to save repetition objects to all similar questions relating to the original of the Remington-Sholes typewriter as not proper cross-examination and as having nothing whatever to do with the case.

A. It was a very early model in the office of the patent attorneys, Messrs. Peirce & Fisher; whether or not 554
that was the original model I do not know.

X-Q. 139. When did you first see said model?

A. In '96.

X-Q. 140. Did that model have any marks on it or designation?

Same objection as to X-Q. 138.

A. If my memory serves me rightly, it had on it in gilt letters "Remington Sholes."

X-Q. 141. But you understood, did you not, that this model was wholly the invention of Zalmon G. Sholes? 555

A. I presumed so.

X-Q. 142. Did Mr. Remington, Mr. Franklin Remington, I mean, or any other Remington, invent any part of the so-called Remington-Sholes model, to your knowledge?

A. Not to my knowledge, but I would have no way of knowing it if he did.

X-Q. 143. You do not know, then, how early this model which you saw in Peirce & Fisher's office was constructed?

A. I do not.

Adjourned to meet 9:30 A. M., April 7, 1900.

556 Met pursuant to adjournment. Parties present as before.

Cross-examination of Mr. Sholes continued:

X-Q. 144. During what period of time was Zalmon G. Sholes superintendent of the factory of the Remington-Sholes Typewriter Company?

The question is objected to as immaterial and irrelevant, and as not proper cross-examination.

A. I do not remember exactly, but I believe all the time that company was in existence.

X-Q. 145. Was Zalmon G. Sholes superintendent of
557 the factory of the Remington-Sholes Typewriter Company when the Remington-Sholes machine No. 1 was brought out and placed upon the market?

Same objection.

A. I believe he was.

X-Q. 146. For how long a period of time has H. I. Seddon been connected with the business he has been carrying on by the corporations Remington-Sholes Typewriter Company and Remington-Sholes Company, and what has been his position in the service of those companies, or either of them, so far as you know?

558 A. He was manager of the Philadelphia office for the Remington-Sholes Company from February, '98, until October of that year. From October, '98, until August, '99, he was an Eastern traveling representative.

X-Q. 147. And what territory did he travel over or canvass?

The question is objected to as not being proper cross-examination, and for the further reason that it has not been shown that the witness has had any opportunity to keep himself informed as to Mr. Seddon's movements.

A. I believe he traveled from Maine to Florida.

X-Q. 148. Then according to your understanding, 559
the New England States and New York City were included within his territory? Is that so?

Same objection.

A. New England States I believe were, but I do not know about New York City.

X-Q. 149. How were the typewriting machines which were manufactured and sold by the Remington-Sholes Typewriter Company designated or under what name were they sold?

A. Remington-Sholes typewriter.

X-Q. 150. And that was the name which the ma- 560
chine bore prior to the reorganization of the company, was it?

A. That is the name that I always knew.

X-Q. 151. You have referred in your testimony to certain signs which were displayed in connection with the Rem-Sho machine at the Philadelphia Exposition, and among others to the fact that a Sholes-Glidden typewriter was there exhibited and a sign was displayed in connection therewith. Please state fully all that was contained on said sign, quoting the words thereon as they were on the sign or as nearly as you now remember them. 561

A. It was a white pasteboard sign; the top line read as follows: "History repeats itself." In substance the balance of the sign was—well, it said that the inventor and manufacturers of the Rem-Sho were the sons of the original inventor and manufacturer, I think it said, of the first successful writing machine.

X-Q. 152. That sign was displayed in connection with an old Sholes & Glidden typewriter, was it?

A. It was.

X-Q. 153. Were the words Sholes & Glidden on the

562 machine exhibited at the Philadelphia Exposition by the Remington-Sholes Company?

A. They were.

X-Q. 154. Where was said machine obtained, do you know?

A. I bought it from Oblemis, 508 Walnut street, Philadelphia.

X-Q. 155. In whose custody was said machine when you last saw it?

A. In my own.

X-Q. 156. Was it a Sholes & Glidden machine such as you understand had theretofore been manufactured
563 and sold by E. Remington & Sons, of Ilion, New York?

A. I believe this machine was manufactured before E. Remington & Sons had been manufacturing the Sholes machines.

X-Q. 157. But in structure and mode of operation it was like the so-called Sholes & Glidden typewriter manufactured and sold by E. Remington & Sons, was it not?

A. Not exactly. This machine had a side-crank shift and spaced the paper automatically as the carriage was drawn back.

564 X-Q. 158. Was it substantially like the Sholes & Glidden machine manufactured by E. Remington & Sons?

A. It was.

X-Q. 159. Is said machine now in existence, and if so, where was it when you last saw it?

A. It is, and is in my store, 22 South 10th street, Philadelphia.

X-Q. 160. What leads you to the belief that said machine was manufactured by the Western Electric Company?

A. Because it is very plainly marked on the machine.

X-Q. 161. How came you to place said sign on this old Sholes & Glidden typewriter manufactured by the Western Electric Company, of Chicago, Ills.? 565

A. Because I wanted to use it to attract attention at the exhibit. I placed it at this particular machine because it was the oldest typewriter I had in my possession.

X-Q. 162. What had said typewriter to do with the Remington-Sholes machine, or the Rem-Sho typewriter, or with any typewriter manufactured by the Remington-Sholes Company?

A. Nothing that I know of except the family history of the inventor of the machine and the family history of myself. 566

X-Q. 163. The machine you say was not manufactured by E. Remington & Sons and hence that particular machine had nothing whatever to do with that concern, had it?

A. Not that particular machine, although the machines they afterwards manufactured were substantially the same.

X-Q. 164. Did anybody connected with the Remington-Sholes Company beside yourself suggest the using of this Sholes & Glidden typewriter for the purpose of advertising the business and machines of the Remington-Sholes Company? 567

A. I suggested it myself.

X-Q. 165. You desired to advertise or make known the connection of the Remington-Sholes machine or Rem-Sho machine and business with the business of E. Remington & Sons, did you?

A. I did not desire to make known the connection of the machine, as they had no connection, but I did desire to make known the connection of the inventors and Mr. Remington's connection with his father's firm of E.

568 Remington. I displayed the machine the same as the bicycle people sometimes display an old model bicycle as a curiosity.

X-Q. 166. What advantage, if any, did you expect to gain by displaying the Sholes & Glidden typewriter in connection with the Rem-Sho typewriter?

A. I presumed it would attract people to our exhibit.

X-Q. 167. What other advantage?

A. Well, if we attracted people to our booth they naturally would look over the Rem-Sho machine and would thereby become acquainted with it, which was the
569 object of the whole exposition.

X-Q. 168. Anything else?

A. No; I cannot say that there was anything else.

X-Q. 169. You did not want to show then the connection between the inventors and manufacturers of the Sholes & Glidden machine with the so-called inventors and manufacturers of the Remington-Sholes machine, if I understand you?

A. Well, I said a few minutes ago that that was the reason the machine was there; in fact, the sign itself said that the Rem-Sho was invented and manufactured by
570 the sons of C. L. Sholes and E. Remington.

X-Q. 170. Then you wanted to get the benefit of that fact by associating the business of the Remington-Sholes Company with the Sholes & Glidden typewriter, did you not?

A. I did not; I put the machine up there with a sign on, that Z. G. Sholes' father had invented this machine and F. Remington's father had been the original manufacturer of the Sholes & Glidden machine. And did not endeavor to show any connection whatever between the two businesses, but wanted to show only the family relation.

X-Q. 171. Why did you want to show the family relationship? 571

A. Well, to say that Z. G. Sholes' father was the inventor of the original writing machine and that Z. G. Sholes was the inventor of the Remington-Sholes, people would naturally think that he had inherited some of his father's inventive ability, and, therefore, might be the man to turn out a good writing machine, and that people knowing that Frank Remington's father was of the firm of E. Remington & Sons, knowing that E. Remington & Sons were first-class manufacturers, would naturally suppose that he also inherited from his father ability for manufacturing. 572

X-Q. 172. Now I ask you whether, as matter of fact, this sign which you displayed on the so-called Sholes & Glidden typewriter at the Philadelphia Exposition was strictly true, bearing in mind the fact that this machine which you were exhibiting was manufactured as you say by the Western Electric Company of Chicago?

A. If the sign referred to read "This machine," then it was not strictly true; if it read "the first machine," I think it was true. I cannot remember just the exact wording of the sign. 573

X-Q. 173. But is it true, as a fact, that E. Remington & Sons had had nothing whatever to do with the manufacturer of this particular machine which you were exhibiting?

A. That I do not know. I know the machine is stenciled as being manufactured by the Western Electric Company of Chicago, and I presume that they did all of the manufacturing of that particular machine.

X-Q. 174. I will now quote you what I understand to have been the matter on this sign for the purpose of refreshing your recollection: "Two generations of

574 typewriters. This machine was invented by C. Latham Sholes of Milwaukee, in the early '60's:—later manufactured by E. Remington & Sons, Ilion, New York. It is the original article itself. The Rem-Sho typewriter:—was brought out by Zalmon G. Sholes, the son of the inventor, and Franklin Remington, the son of the manufacturer of this machine. An instance of the familiar adage that 'history repeats itself.'" Having quoted to you what I believe was the wording of this sign, I ask you to say whether or not the language quoted is not the identical language that was on the sign displayed by you in connection with the Sholes & Glidden
575 typewriter at the Philadelphia Exposition.

A. That is the substance of the sign, but I am not quite positive that those are the identical words, although it sounds very much like it. I recognize some parts of it as being there. I wrote the wording for the sign myself.

X-Q. 175. Do you now recall the fact that the notice as displayed read "this machine was invented by C. Latham Sholes, of Milwaukee, in the early '60's:—later manufactured by E. Remington & Sons, Ilion, New York"?

576 A. I recall this much of it: "This machine was invented by E. Latham Sholes of Milwaukee, later manufactured by E. Remington & Sons, Ilion, New York."

X-Q. 176. Do you recall the fact that the sign also read, "and Frankling Remington, the son of the manufacturer of this machine"?

A. It either read that way or "Franklin Remington, the son of the original manufacturer;" I am not quite positive which.

X-Q. 177. Well, if it read the way quoted in my last preceding question, was this sign strictly correct or true?

A. It was not.

X-Q. 178. About how long did the interview between you and the person representing himself as Charles T. Francis, and as an instructor at the Naval Academy, last? 577

A. As near as I can remember, for about half an hour.

X-Q. 179. And during that half hour, I presume you carried on with this gentleman a pretty continuous conversation, did you not?

A. I did.

X-Q. 180. Had you ever seen this man before, or have you ever seen him since? 578

A. Neither.

X-Q. 181. Kindly describe the appearance of this so-called Mr. Francis with whom you had the interview at the Rem-Sho office in Washington in September, 1898.

A. As near as I can remember, he was about as tall as Mr. Fisher, and I should say about five feet ten inches; the gentleman was more of a blonde than a brunette, had a light mustache, weighing about 170 to 175 pounds.

X-Q. 182. I presume that you do not now recall all the conversation which took place between you and the so-called Mr. Francis, or all that you said or he said in that interview; is such the fact? 579

A. I can recall the substance of all the conversation.

X-Q. 183. But without regard to the substance, as you call it, do you now pretend to say that you can recall all the conversation which took place between you and Mr. Francis, so called, at the time of said interview?

A. I can recall all the conversation which related to the typewriter business.

X-Q. 184. Can you now recall and repeat the pre-

580 cise language or words which you used in the interview between you and the so-called Mr. Francis?

A. No, sir; I cannot.

X-Q. 185. Can you recall or repeat the precise language or words which the so-called Mr. Francis used at the time of your interview with him?

A. No; not word for word.

X-Q. 186. Did you make a memorandum in writing at the time or soon after of the conversation between you and the so-called Mr. Francis at the office of the Remington-Sholes Company in Washington?

581 A. I made a memorandum of his name and address, but I did not make a memorandum of the conversation.

X-Q. 187. After the conversation occurred, when was your attention first called to this interview with Mr. Francis, so called?

A. About three months afterwards.

X-Q. 188. I understand you to have stated in your testimony that you distributed catalogues which were from time to time issued by the Remington-Sholes Typewriter Company and the Remington-Sholes Company, and I infer from that fact and your having been associated with the company, as you have stated, you are familiar with the contents of said catalogue; am I right in

582 my understanding?

A. I have seen all the catalogues, but there is no reason that the contents of any of them should be impressed particularly upon my mind.

X-Q. 189. Well, you have from time to time read all of these catalogues, have you not; I mean the various kinds which have been issued by said companies?

A. I have.

Defendant's counsel desires to state that before this witness was called here from Philadelphia he wrote the witness requesting him to bring with him

specimens of the letter-heads, circulars and business cards, but that the letter did not reach the witness until after he had left Philadelphia. Counsel states, however, that it is his purpose to introduce in evidence copies of all catalogues issued by the Remington-Sholes Company. 583

X-Q. 190. Do you remember having seen in any of these catalogues or any catalogues issued by the Remington-Sholes Company which stated in substance and in effect that the Rem-Sho machine was the only typewriting machine manufactured by a Remington, and also that it was the second generation of typewriter builders by the great name of Remington? 584

A. I remember seeing the words "The only machine now made by a Remington," but I do not recall the second generation statement.

X-Q. 191. Have you seen the statement, so far as you appear to remember, in catalogues which have been circulated by you and by others in behalf of the Remington-Sholes Company?

A. I have seen the statement "This is the only machine now made by a Remington" in catalogues which have been circulated by me.

X-Q. 192. Have you also seen that statement in any advertisements in newspapers or any publications in which the same statement was made? I mean publications advertising the Remington-Sholes typewriter and purporting to be issued by the Remington-Sholes Company? 585

A. I believe I saw it once; I cannot remember what publication it was in, or when.

X-Q. 193. I presume that during the course of your employment by the Remington-Sholes Company you made that statement more or less frequently to persons who were looking at the Remington-Sholes machine or

586 examining it with a view to purchase; is such the fact?

A. I have.

X-Q. 194. And have you ever made the statement to purchasers or intending purchasers in substance or in effect that it was the second generation of typewriter builders by the name Remington?

A. No, sir, I have not; I have called it second-generation typewriter.

X-Q. 195. You say in your testimony that you did tell the so-called Mr. Francis that the Rem-Sho machine was the only typewriter on the market now made by a Remington; is that so?

587 A. I did.

X-Q. 196. Then you regarded it, I suppose, as a Remington make of machine; is that so?

A. I regarded it as being made by F. Remington.

X-Q. 197. Well, that would make it a Remington make, would it not?

A. Only so far as F. Remington is connected with the Remington-Sholes Company.

X-Q. 198. You have said you regarded it as being made by F. Remington. Now did you not regard it as a Remington make of machine?

588 A. I said that the statement "the only machine now made by a Remington" referred to F. Remington of the Remington-Sholes Company. I regarded it as being made by a Remington.

X-Q. 199. Well, did you regard it as an F. Remington make of machine?

A. No, sir; I did not.

X-Q. 200. Why not?

A. Because it was made by the Remington-Sholes Company, of Chicago.

X-Q. 201. Why, then, did you say that it was the only machine now manufactured by a Remington?

A. I took the statement from the Rem-Sho cata- 589
logue.

X-Q. 202. But nevertheless you mean to say now, as you said in a previous answer, that you regarded it as being made by a Remington; is not that so?

A. It is.

X-Q. 203. And I ask you again whether you did not also regard it as a Remington make?

A. I regarded it as being made by a Remington. I presume that would make it a Remington make.

X-Q. 204. Will you please state how this Remington-Sholes machine was designated on the market?

A. Originally as the Remington-Sholes typewriter; 590
now as the Rem-Sho typewriter.

X-Q. 205. Mr. Romig in his testimony referred to the fact that in the course of his experience in selling the so-called Rem-Sho typewriter in the City of Philadelphia on several occasions people coming into the office to look at typewriters asked him, "Is this the Remington machine?" Kindly state whether you have ever known any such inquiries to be made at Reming-Sholes Company's offices of which you have had charge or in which you have been engaged in any capacity.

A. I have had these inquiries made as follows: I 591
have been asked if we had any connection with the people who make the Remington Standard or if we had any connection with the people known as the Remington Machine Works, of Wilmington, Delaware, or any connection with the Remington & Sherman Company, of Philadelphia, and to which I always replied positively no.

X-Q. 206. Please state when and where, so far as you recollect, such inquiry was made.

A. In Philadelphia.

592 X-Q. 207. How frequently was this inquiry made in Philadelphia?

A. That I cannot say.

X-Q. 208. Quite frequently?

A. I have no means of knowing how frequently I know; I have been asked the question on several different occasions; I cannot tell how many times.

X-Q. 209. I notice in the catalogues issued by the Remington-Sholes Company that the statements made in effect that this inquiry is frequently made, and I desire to know what your experience or observation was in that respect.

593 A. Well, I presume in the early days of the machine the inquiry was frequently, but as the machine has become more known the inquiries have become less. I would not hesitate to state how many times the inquiry has been made, if I had any means of knowing.

X-Q. 210. Have you ever known of an instance or instances where mail matter intended for the Remington people or Wyckoff, Seamans & Benedict has been received by the Remington-Sholes Company?

A. I have received some mail, but the street and number address was addressed to my office.

594 X-Q. 211. When did you receive it?

A. It was last fall sometime.

X-Q. 212. How many such instances do you recall?

A. Twice.

X-Q. 213. When was the first time?

A. Some time between the 1st of August and the 1st of November, 1899.

X-Q. 214. When was the second occasion?

A. During the same period.

X-Q. 215. What was the character of those communications, and how were they addressed or to whom were they addressed?

A. The character of the communication I do not know; I saw at once they were not meant for me, and I sent them right over to Mr. Soby, the manager of Wyckoff, Seamans & Benedict office; I mean when I say "me," the Remington-Sholes Company Philadelphia office, of which I am manager. I believe one envelope was addressed "Remington & Co. Cor. 10th & Chestnut Sts., Philadelphia;" the other I believe was "Remington Typewriter Co., 10th & Chestnut Sts., Philadelphia;" these I would not swear to, as I had no occasion to remember them, bus as I recall them, they were as above. 595

X-Q. 216. You were satisfied on examination of said communications or letters that neither was intended for the Remington-Sholes Company, and you turned them over or sent them to Wyckoff, Seamans & Benedict at their Philadelphia office; is that correct? 596

A. It is correct.

X-Q. 217. I show you one of these communications and ask you to examine the same, including the letter and the envelope, and having done so, say whether or not that was one of the letters or communications which you have referred to in your previous answers, and whether or not the endorsement on the envelope, "opened by F. L. Sholes," is in your genuine handwriting? 597

A. That looks like my writing, and I will say that it is, and this appears to be one of the letters which I received, although I cannot recall the date, March 15th. I did receive this letter and sent it to Mr. Soby, the general manager of Wyckoff, Seamans & Benedict's Philadelphia office.

X-Q. 218. And is it a fact that after opening said letter and reading or examining the same you became satisfied that it was not intended for the Remington-Sholes Company, but was intended for Wyckoff, Seamans & Benedict?

A. It is.

598 The letter and envelope produced and shown the witness, and identified by him, are marked for identification, "Complainant's Crosby M. Black Letter and Envelope."

X-Q. 219. At the time of the receipt of these letters by the Remington-Sholes Company, Philadelphia, upon what street and at what number was its office located?

A. 22 S. 10th street, which is in the Mutual Life Insurance Company's Building, which is corner 10th and Chestnut, in which the entrance of the building in the index is the Remington-Sholes Company's name as occupying rooms Nos. 3 and 4 of that
599 building.

X-Q. 220. In a previous answer you have mentioned the fact that persons have sometimes inquired as to the connection, if any, between the Remington-Sholes Company, or Rem-Sho typewriter, and the concerns known as the Remington Machine Company, of Wilmington, Delaware, and Remington & Sherman Company, of Philadelphia. Please say whether or not either of said concerns is or ever has been engaged in the manufacture or sale of typewriting machine, to your knowledge.

A. Not to my knowledge.

600 X-Q. 221. Did people inquire for these concerns last named want typewriters, so far as you know?

A. People that dropped into the store who wanted to see machines with the view of purchasing.

X-Q. 222. Is that all you know about the matter?

A. I presume some of them bought some of our machines. I cannot recall any names or numbers, but I know I have talked with people about these things, but had no occasion to remember them.

X-Q. 223. The people who made this inquiry of you concerning the connection of your company with said concerns did not make the inquiry under the belief that

said concerns were manufacturing typewriters or selling typewriters, did they? 601

A. That, of course, I do not know. They simply asked if the concerns mentioned were in any way connected.

X-Q. 224. Do you remember whether the inquiry related to the fact as to whether the said two concerns were connected with your company or the Remingtons therein were so connected?

A. That I cannot say. Most of the questions ran about as follows: "Is your company connected with the Remington Machine Works at Wilmington?"

X-Q. 225. In your experience and observation in the sale of typewriter machines have you found that the name Remington associated with or connected with typewriter machines you handled or sold was a valuable one? 602

The question is objected to as immaterial and irrelevant and is not proper cross-examination, since the question calls for matter concerning which this witness was not interrogated in his direct examination.

A. Yes and no. At times I have found people with whom the name Remington meant much, and on the other hand I have found people who said that if the Rem-Sho typewriter had any connection with the Remington Standard you could take it out of the place. 603

Cross-examination closed.

Recess.

After recess. Present as before.

R-D. Q. 226. State in what way you have found people with whom the name Remington meant much.

A. In this wise: The name Remington has been associated with the manufacture of high-grade firearms, sewing machines and bicycles, and I have talked with

604 people about typewriters who had used several of these articles, and the name Remington stood for high-grade manufacture.

R-D. Q. 227. State how the envelope shown you during your cross-examination, and which was marked for identification "Crosby M. Black Letter and Envelope," was addressed originally and at the time you received it.

A. "Remington Mach. Co. 10th & Chestnut, Phila."

R-D. Q. 228. State how many letters altogether were received by you or at the Philadelphia office of the
605 Remington-Sholes Company, and which you found upon examination to be intended for the office of Wyckoff, Seamans & Benedict.

A. To the best of my knowledge, only two.

R-D. Q. 229. State how many letters were received at the office of Wyckoff, Seamans & Benedict in Philadelphia and which were intended for the Remington-Sholes Company.

A. I do not know how many they received; they delivered one letter and a package to me after they had kept the letter two or three days.

R-D. Q. 230. Did you ever represent the Reming-
606 ton-Sholes typewriter, or the Rem-Sho typewriter, as being a Remington make of machine, or as a Remington machine?

Objected to by complainant's counsel as incompetent because it calls for the conclusion of the witness and not for what he said; also because the witness has fully answered this question in his previous testimony.

A. I never represented the Remington-Sholes or the Rem-Sho typewriter as a Remington make of machine, or as a Remington machine, but I have represented it as a machine made by a Remington.

R-D. Q. 231. In X-Q. 177 you were asked, "Well, if it read the way quoted in my last preceding question, was this sign strictly correct or true?" and to this question you answered, "It was not." I now call your attention to the quotation, or what purports to be a quotation, from the sign and ask you to state in what respect you consider that the language of the sign was not strictly correct or true. 607

Same objection as last.

A. I meant it was not true in the sense that the identical machine upon which the sign was displayed was manufactured by E. Remington & Sons, but that the machine later manufactured by them was substantially and in form and pattern the same. 608

R-D. Q. 232. What, if anything, enables you to recall the conversation with the party who introduced himself as Mr. Francis, and concerning which conversation you have testified?

A. Because it was the only conversation I ever had in my life in which I was requested to fill an order for a No. 6 Remington Standard typewriter with a Rem-Sho machine.

*Re-Cross Examination.*

609

R-X Q. 233. Is it not a fact that the name Remington has also been associated with the manufacture of high-grade typewriting machines?

A. It is.

R-X Q. 234. And the typewriting machines which have been manufactured and sold as the Remington machine or the Remington Standard have always been regarded in the market as high-grade machines; is not that so?

A. I have always regarded it as such.

R-X Q. 235. And is it not a fact that the name Rem-

610 ington has always meant much or been a significant name in the typewriter art?

A. Yes; it has.

R-X Q. 236. And it is a fact, is it not, that you have found people in the course of your experience who thought so also?

A. I have met such people.

F. L. SHOLES.

Adjourned subject to further notice.

*District of Columbia, ss.*

611 I, Hugh M. Sterling, a Notary Public in and for the District of Columbia, acting as Special Examiner in the herein mentioned cause, by agreement of counsel, do hereby certify that the foregoing depositions of William J. Romig, John Leslie Russell and Frank L. Sholes were taken by and before me pursuant to the 67th Rule in Equity of the Supreme Court of the United States, at my office in the McGill Building, 908-14 G street, Washington, D. C., commnecing on Wednesday, April 4th, 1900, at 3 o'clock P M.; that the taking of said depositions was continued by adjournment from day to day to
612 the 7th day of April, 1900, and adjourned subject to further notice; that I was attended at the taking of said testimony by H. D. Donnelly, Esq., of counsel for complainant, and George P. Fisher, Jr., of counsel for the defendant; that before deposing the said witnesses were by me duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, and their depositions were reduced to writing from their statements and in my presence by Mary B. Cole, and the same duly subscribed by the said witnesses.

And I do further certify that I am neither attorney nor of counsel for any of the parties to said cause, or in

said depositions or caption named, and am in no wise, 613
either directly or indirectly, interested in the result of said cause.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal this 9th day of April, 1900.

HUGH M. STERLING,
Notary Public and Acting Special Examiner.

[SEAL.]

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT. 614

Wyckoff, Seamans & Benedict
*against*
The Howe Scale Company of 1886. } In Equity.

Pittsburg, Pa., May 28, 1900.

Testimony taken on behalf of defendant in the above-entitled cause before H. D. Gamble, Esq., Commissioner and Special Examiner by consent and under stipulation heretofore made, and pursuant to the 67th Rule as amended of the Supreme Court of the United States in Equity. 615

Present: H. D. Donnelly, Esq., for complainant; George P. Fisher, Jr., for defendant.

M. C. VANCE, a witness of lawful age, being first duly cautioned and sworn, and called on behalf of defendant, testified as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, residence and occupation.

A. M. C. Vance, Sharpsburg; occupation, stenographer.

616 Q. 2. How long have you been employed as a stenographer?

A. About eight years.

Q. 3. In the course of your employment as a stenographer have you had occasion to use a typewriting machine, and if so, what makes of machines have you used?

A. I have used machines; I have used Remingtons altogether with the exception of a Rem-Sho for a very short time.

Q. 4. When did you begin to use the Remington machine?

617 A. I can't remember exactly; about—I really can't remember. Well, I have used it all the time that I have been a stenographer except the time I used a Rem-Sho, and I think that was about a year—perhaps not quite that long.

Q. 5. If I understand you correctly, you have used the Remington typewriter for about eight years except for the time during which you used a Rem-Sho?

A. That is right.

Q. 6. Where did you get the Remington machine that you used when you first began using the Remington?

618 A. It wasn't my machine; it belonged to Mr. James I. Kay, by whom I was employed.

Q. 7. State when you obtained the Rem-Sho typewriter which you say you used for a time, and from whom you obtained it.

A. I don't remember when I got the Rem-Sho; I think it was 1897 or 1898—I am not sure, but I got it from Mr. Scorer.

Q. 8. Did you take the machine on trial or did you purchase it?

A. I took it on trial.

Q. 9. But you did not purchase it?

A. No, sir; that is, I was to purchase it if it proved satisfactory. 619

Q. 10. But you did not purchase it?

A. No, sir.

Q. 11. Is the Mr. Scorer to whom you refer Mr. Andrew J. Scorer of this city?

A. I don't know his initials or his first name—I think his first name is Andrew.

Q. 12. Do you know what company he was representing at the time he called upon you with respect to the Rem-Sho machine?

A. Howe Scale Company.

Q. 13. How long did you have the Rem-Sho machine on trial? 620

A. I had different ones and it may have been a year or less than a year—something about a year, I think.

Q. 14. Did Mr. Scorer at the time he first called your attention to the Rem-Sho machine explain to you any advantages or supposed advantages of such machine over the Remington?

Objected to by complainant's counsel on the ground that the same is leading.

A. Certainly. All agents do that.

Q. 15. Can you state what marks were upon the Rem-Sho machines that were taken by you on trial—I mean what names? 621

A. On the top of the paper rest Rem-Sho was cut into the steel, and outside of that I don't remember positively whether it was marked in the front or not.

Q. 16. Did the name Remington-Sholes appear upon the machine, so far as you recall?

A. I know I saw the name Remington-Sholes somewhere on the machine; I think it was right back of the keyboard.

Q. 17. When you took this Rem-Sho machine on trial,

622 did you suppose it was the same as the Remington machine that you were familiar with?

Objected to by counsel for complainant as leading.

A. No.

Q. 18. Before you took the Rem-Sho machine on trial, you knew by whom the Remington machine was manufactured, did you not?

Same objection as last.

A. Yes.

Q. 19. By whom was it manufactured?

623 A. Wyckoff, Seamans & Benedict, or the Remington Typewriter Company.

Q. 20. Did you know where Wyckoff, Seamans & Benedict were located—I mean where their factory was?

A. I only know what is on their machine, and that is marked Ilion, New York.

Q. 21. Do you recall whether or not, when Mr. Scorer called upon you first, or at any time later, he gave you a catalogue of the Rem-Sho machine?

A. I don't remember that.

Q. 22. Did he give you a business card?

624 A. He gave me his own personal card.

Q. 23. Do you recall—what was on that card?

A. His name, but outside of that I don't recall.

Q. 24. At the time that Mr. Scorer first called upon you in regard to the Rem-Sho machine, did you know where the office of the Remington typewriter in Pittsburg was?

A. Yes, sir.

Q. 25. Where was it, and who was the manager?

A. Wood street, and Mr. Martin had charge of it.

Q. 26. Did Mr. Scorer make any offer to exchange the Rem-Sho machine for a Remington?

Objected to by complainant as leading.

A. I did not have any machine; I wanted to buy a machine. 625

Q. 27. Were you at that time using a Remington machine?

A. Yes.

Q. 28. When you took the Rem-Sho machine on trial, did you suppose that it was the same as the Remington Standard, or was manufactured by Wyckoff, Seamans & Benedict?

Objected to as leading.

A. I didn't think it was quite the same machine as the Remington; I didn't know who manufactured it. 626

Q. 29. You knew that it was not offered for sale by the Pittsburg agents of Wyckoff, Seamans & Benedict, did you not?

A. Yes.

Q. 30. And you knew that it was offered for sale in competition with the Remington, did you not?

Objected to as leading.

A. Yes.

*Cross-Examination by Mr. Donnelly.*

X-Q. 31. Are you now able to fix the date when the Rem-Sho or Remington-Sholes machine was first left in your custody on trial? 627

A. No; I can't fix the time. I might be able to from my book at the office.

X-Q. 32. Can you now say when this Rem-Sho machine, so called, was taken from your possession?

A. No; I can't remember when I gave the machine up, either.

X-Q. 33. Do you now remember about how long you had said machine on trial?

A. I said in my direct examination I didn't know.

X-Q. 34. Can you state approximately?

A. Well, I said I thought about a year.

628 X-Q. 35. As I understand your testimony, the machine was not satisfactory to you and you returned it. Is that correct?

A. That is right.

X-Q. 36. You obtained this machine, as I understand, from Mr. Scorer, or through his agency; is that correct?

A. Yes.

X-Q. 37. What did you understand the term Rem-Sho to mean?

Objected to as immaterial, irrelevant and not cross-examination.

629

A. I thought it meant the name of the machine.

X-Q. 38. You understood, didn't you, that it was an abbreviation for the name Remington-Sholes, did you not?

Same objection.

A. Yes, sir.

X-Q. 39. Did you notice that the name "Remington" was used upon and in connection with this Rem-Sho typewriter or Remington-Sholes typewriter?

A. I knew that was the name of the machine.

630 X-Q. 40. Prior to the time when you obtained this Rem-Sho machine or Remington-Sholes machine, had you ever before seen or heard of that machine?

A. No, sir.

X-Q. 41. Prior to the time when you obtained this so-called Rem-Sho machine, had you ever seen or heard of a typewriting machine in connection with which the name "Remington" was used, other than the machine made by the Remington Company, or Wyckoff, Seamans & Benedict?

A. No.

X-Q. 42. According to your observation or experi-

ence had the Remington typewriter been pretty largely 631
in use in and about Pittsburg and vicinity?

Objected to as not proper cross-examination.

A. Yes, sir.

X-Q. 43. Has your attention recently been called, I mean recently before your testimony to-day, to the marks or names which were upon the so-called Rem-Sho machine at the time it was in your possession?

A. Yes; I was asked if I remembered seeing them.

X-Q. 44. And as to the marks upon it or words upon it?

A. I was asked whether I remembered whether 632
Rem-Sho or Remington-Sholes appeared on the machine, and I said I did.

X-Q. 45. And were you also asked what names appeared on the Remington typewriter?

A. I was asked whether I knew by whom it was manufactured.

X-Q. 46. At the time you obtained this so-called Rem-Sho machine did it occur to you or was any doubt created in your mind as to the use of the name "Remington" in connection with this machine?

Objected to as immaterial and irrelevant and as 633
not proper cross-examination.

A. Why, no, I just simply thought it was the name of the machine.

X-Q. 47. Did you think or suppose that there were two machines on the market using the name Remington?

A. I really didn't think anything about it; I wanted to buy a machine and I wanted a Remington and Mr. Scorer heard that I wanted to buy a machine and came in and asked me to buy the Rem-Sho—said that it was a new machine that was just put on the market, and I

634 didn't want to take it—I told him I didn't care to invest in a machine that had never had any test, and then he put it in on trial—said if it wasn't satisfactory I needn't keep it. He told me it was as good a machine as the Remington, and that one of the parties who had once been connected with the manufacture of the Remington was in this new company. Although I might add that I knew it wasn't a Remington machine and I wasn't buying it for a Remington.

X-Q. 48. Did you ever make any written statement concerning the substance of the interview between you and Mr. Scorer at the time you obtained this so-called
635 Rem-Sho machine?

A. I made a statement about substantially what I said in my last answer. I had a conversation with Mr. Crean and I told him about the same, I think, as in my last answer. Mr. Scorer told me it was just as good as the Remington, and gotten up on practically the same principles.

X-Q. 49. And, as I understand you, gotten up by people who had formerly been connected with or manufactured the Remington?

A. He said one man who had once been in the Rem-
636 ington Company was now connected with the new company.

X-Q. 50. And you understood that that man's name was Remington?

A. I really don't remember whether he told me that man's name or not, but I think it was a son of the Mr. Remington who was in the Remington Manufacturing Company.

X-Q. 51. Did you in July, 1899, make a statement to Mr. Crean at the office of Wyckoff, Seamans & Benedict in Pittsburg and in the presence of his stenographer and did his stenographer take down your statement and

write it out upon the typewriter, and did you sign the same? 637

A. No; I don't think I signed any paper. I made a statement to Mr. Crean and I made a statement to you at the Hotel Lincoln last summer, and I think it was practically the same as given in my last answer. I don't know what the stenographer took down. If I could see that statement I could tell you whether that is what I said.

X-Q. 52. You did make a statement in the presence of Miss Stein and Mr. Crean, which Miss Stein wrote out and which you afterwards signed; is not that so? 638

A. I made a statement and Miss Stein took it down in shorthand, but I don't remember ever seeing it after it was written out. She wrote that out after I left. She took it in shorthand, but I don't think she wrote it out while I was there; I am sure she didn't. I never signed any statement. I might add that even if I thought this was a Remington machine, the Remington agent, Mr. Martin, was up to see me personally and tried to talk me out of taking it. About signing that statement I am sure; I have no remembrance at all about it. If you would let me see the statement I could tell you whether it is my signature. 639

X-Q. 53. You do remember the fact, however, that you made a statement verbally to Mr. Crean, which Miss Stein took down in shorthand?

A. Yes; I think Mr. Crean asked me some questions there and I answered them and he dictated my answers to the stenographer, if I remember correctly.

X-Q. 54. Whatever statement you made at that time I presume was correct, and as you then remembered it?

A. I don't know; I would have to see the statement and see what they wrote. If you would let me see the statement, I could tell very soon whether that is what I wrote.

640 X-Q. 55. Do you remember now what you did tell Mr. Crean on that occasion?

Objected to as immaterial and irrelevant and as not proper cross-examination.

X-Q. 56. I am not asking for the conversation, but simply for the fact.

Same objection.

A. I don't remember the exact words, but I can give the substance of it. It is about the same as I said here to-day.

X-Q. 57. If you signed any written statement, you
641 undoubtedly read it over?

Same objection.

A. I don't remember of signing it or reading any statement in connection with this matter at all.

X-Q. 58. Did you state in Mr. Crean's presence and in the presence of his stenographer, Miss Stein, that it was several weeks after you obtained the so-called Rem-Sho typewriter before you learned or ascertained that it was not made by the Remington Company or by Wyckoff, Seamans & Benedict, or that in substance?

A. Most decidedly not.

642 X-Q. 59. Did you say in the presence of Mr. Crean and Miss Stein that Mr. Scorer told you and you believed that it was made by the Remington people or Remington Company, and that you did not learn that the Rem-Sho machine, so called, was not made by said company until some time afterwards, or that in substance?

A. I knew it wasn't made by the same company who manufactured the real Remington, but he told me that one of the parties who had at one time been connected with the Remington machine or a son of Mr. Remington, I don't remember—any way it was somebody who had at one time been connected with the manufacture of

the Remington was now interested in the manufacture of the Remington-Sholes. Said it was gotten up on the principle of the No. 2 Remington. 643

X-Q. 60. The question is repeated and the witness is requested to answer yes or no.

A. No. The question didn't come—there wasn't any question whether it was a Remington machine or not. I knew what I was buying. He represented it was as good as a Remington and simpler than the Remington machine that was then on the market, but as to its being made by the Remington people, I don't think there was anything said about that.

X-Q. 61. How came Scorer to tell you that one of the parties who had at one time been connected with the Remington machine was now connected with the manufacture of the Rem-Sho, so called? 644

A. Because I told him I didn't want anything but a Remington machine—that I had always used the Remington and didn't want to experiment with a new machine that was just being put on the market—didn't know what work it would stand.

X-Q. 62. And to overcome your objections and reluctance, Mr. Scorer made this statement to you, as you spoke? 645

A. Well, he told me that the machine was being made by people that had been in the typewriter business and understood it—that it was a good machine.

X-Q. 63. Question repeated.

A. I didn't agree to buy it; I agreed to take it on trial to see what it would do. I wanted a No. 2 Remington, and simply took this on trial to see whether it would work as well as a No. 2 Remington, which it didn't.

X-Q. 64. Now, Mrs. Vance, will you kindly tell me why, if you know, or for what reason, as you supposed,

646 Mr. Scorer stated to you that this so-called Rem-Sho machine was made by people or was manufactured by some one who had formerly been connected with the manufacture of the Remington machine?

Objected to as immaterial and irrelevant.

A. To induce me to give it a trial.

Complainant's counsel reserves the right to recall Mrs. Vance for the purpose of further cross-examination as to the written statement which she made and signed, as complainant's counsel alleges,
647 on or about July, 1899. He reserves the right to cross-examine her as to the facts whether or not she did sign the typewritten statement, which we will produce and which statement is not now in his possession, but is at his office in New York; and had he known that Mrs. Vance was to be called as a witness by the defendant he would have had it here for use in connection with the cross-examination of this witness.

Defendant's counsel denies the right of counsel for complainant to make any reservation as to further examination of this witness, and states upon
648 the record that it has not been the practice of either complainant's counsel or himself to give the names of witnesses to be examined, or even to serve formal notice of taking depositions.

*Re-Direct Examination by Mr. Fisher.*

R-D. Q. 65. How did you happen to go to the Hotel Lincoln in July, 1899, and whom did you see there?

A. I don't know; I think I was requested by Mr. Scorer to go down there, or Mr. Scorer told Mr. Vance to let me know. I wasn't at that time, and I went down

there and had a talk with Mr. Donnelly. Mr. Scorer I don't think was in the room when Mr. Donnelly was talking with me. I think Mr. Vance was there. Mr. Vance was along with me at that time. 649

R-D. Q. 66. Was anything said to you at that time about using you as a witness?

A. Yes; I understood I was to go on the stand.

R-D. Q. 67. Was the examination of witnesses in progress at the time you were at the Hotel Lincoln?

A. I think so; I am not sure. I wasn't in the room where they were examining, anyway. There were some people in the next room; I don't know what they were doing there. 650

R-D. Q. 68. What did you understand to be the name of the machine that you say Mr. Scorer got you to take on trial?

Objected to by complainant's counsel as incompetent and improper, because the question calls for the understanding of the witness.

A. Remington-Sholes.

R-D. Q. 69. I call your attention to X-Q. 39 and ask you to state how you reconcile your answer to that question with the answer which you have just given. 651

Complainant's counsel objects to the question as incompetent and improper, because it is in the nature of a cross-examination of defendant's own witness.

A. I don't think I paid any more attention to the word Remington than to any word. I didn't attach any meaning to the word "Remington."

R-D. Q. 70. But did you understand that the machine which Mr. Scorer was offering you on trial was

652 named the Remington or the Remington-Sholes?

Same objection as last, and also as improper, because it is leading.

A. The Remington-Sholes.

M. C. VANCE.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF PENNSYLVANIA. } SCT.

*The President of the United States, To M. C. Vance:*

653 We command you, that laying aside all manner of business and excuses whatsoever, you personally be and appear before H. D. Gamble, Esq., a Master duly appointed by the Circuit Court of the United States, in and for the Western District of Pennsylvania, at Room 307, Postoffice, Pittsbur Pa., on Tuesday, May 28th, 1900, at 10 o'clock, A. M., then and there to testify all and singular those matters and things which you shall know in a certain proceeding now depending in the Circuit Court at Rutland, Vermont, between Wyckoff, Seamans & Benedict, complainants, and the Howe Scale Company, defendant, on the part of the
654 said complainant.

And hereof fail not, under the penalty of four hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Pittsburg, this 25th day of May, 1900, and in the 124th year of the Independence of the United States.

H. D. GAMBLE, Clerk.

V. E. WILLIAMS, a witness of lawful age, being first duly cautioned and sworn on behalf of defendant, testified as follows: 615

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, age, residence and occupation.

A. My name is Vincent Edward Williams; my age is forty-six years; my residence, Latrobe, Westmoreland County, Pa. By profession I am an attorney at law. My place of business is Greensburg, Westmoreland County, Pa. I have been a practicing attorney for twenty-three years about. Am the senior member 616 of the firm of Williams, Sloan & Griffith.

Q. 2. Did you ever buy a typewriting machine, or did your firm ever buy a typewriting machine, and if so, when?

A. I have purchased a great number of typewriting machines. The firms with which I have been interested have been using such machines for twelve or fifteen years past.

Q. 3. What typewriting machines did the firm of Williams, Sloan & Griffith use at and prior to January, 1898?

A. The firm of Williams & Griffith began with the 617 Hammond, changed from that to the Remington, and when the firm of Williams, Sloan & Griffith was organized in January, 1893, it continued to use the Remington exclusively down until about January, 1898.

Q. 4. What became of the Remington machine which your firm was using last—I mean about January, 1898?

A. Since the firm of Williams, Sloan & Griffith was organized we have had two or more machines in constant use, and in January, 1898, the firm exchanged the Remington for a Rem-Sho machine.

658 Q. 5. Did you understand by whom the Remington machine was manufactured at and prior to the time you made this exchange?

Objected to by complainant's counsel as improper, because it calls for the understanding of the witness.

A. I would say that we did. We knew the Rem-Sho machine was manufactured by the Howe Scale Company, and we paid that company the difference.

Q. 6. Whom did you know as the manufacturers of the Remington machine at the time this trade was made
659 —I mean the manufacturers of the machine that you traded away?

A. We always understood that the Remington machine was manufactured by Wyckoff, Seamans & Benedict. We always dealt for our machines, however, with A. M. Martin, of Wood street, Pittsburg, with whom I have been personally and intimately acquainted for not less than twenty-five years.

Q. 7. Did you know that Mr. Martin was the representat[illegible] of the Remington typewriter?

A. We certainly did.

Q. 8. At the time that you purchased this Rem-Sho
660 machine was the machine exhibited to you?

A. It was. A machine was left by Mr. Scorer, agent for the Rem-Sho people, for trial. We kept that machine some weeks before finally purchasing one for ourselves.

Q. 9. Do you remember what names or marks were on that machine?

Complainant's counsel objects to the evidence of this witness in reference to the Rem-Sho machine concerning which he is being examined, and to this question upon the ground that all the evidence in the record in relation to this machine and the ob-

taining the possession and the use thereof by the witness' firm was drawn out by defendant's counsel on the cross-examination of the witness Scorer, and this matter was not referred to by Scorer in his direct examination. And complainant's counsel therefore claims and insists that the defendant cannot examine this witness for the purpose of contradicting the evidence of Scorer which was drawn out by defendant's counsel in his cross-examination, he making the witness Scorer his own witness on the cross-examination so far as the matter inquired about is concerned. 661

A. I remember that the machine was distinctly marked "Rem-Sho." 662

Q. 10. What became of that machine?

A. We later, I think in the same year, went back to our first love and exchanged it for a Remington.

Q. 11. Can you produce any correspondence that passed in regard to the order or purchase of this Rem-Sho machine by Williams, Sloan & Griffith?

Same objection as last.

A. I have here a letter from the Howe Scale Company addressed to our firm dated January 29, 1898, acknowledging our order through Mr. Scorer for one No. 3 Rem-Sho typewriter, and advising us that the machine was ordered sent to us direct by express from the factory. 663

Q. 12. State when this letter was received, as near as you recall.

Same objection as last.

A. Shortly after this date.

The letter referred to by witness is offered in evidence, and the same is marked "Defendant's Exhibit Williams, Sloan & Griffith Letter."

664 The letter offered in evidence is objected to on the same grounds last stated.

Q. 13. At the time you placed your order for the Rem-Sho machine by whom did you understand that that machine was manufactured and by whom did you at that time understand that the Remington typewriter was manuafctured?

Complainant's counsel objects to the question on the grounds last stated; also that the question is improper because it calls for the understanding of the witness and not for his knowledge.

665 A. We understood distinctly that the Rem-Sho was a competing machine; that it was not manufactured by the same company nor at the same factory as the Remington, and that it was in fact manufactured by the Howe Scale Company.

Q. 14. Did you believe that the Rem-Sho machine which you were to receive would be the same kiind of a machine as the Remington that you were giving in exchange for a Rem-Sho?

Same objection as last.

A. We did not. We understood and believed that
666 the Rem-Sho would be not only the equal of the Remington, but superior to it, and we were persuaded that it had elements of superiority. Anxious to encourage a competitor and get the best machine in the market, we changed from our friend Mr. Martin and purchased this machine through Mr. Scorer.

Q. 15. Did you personally talk with Mr. Sicorer in regard to this Rem-Sho machine?

Same objection as last.

A. I did.

Q. 16. Did you talk with him about it before the machine was purchased?

Same objection as last.

A. I certainly did. I remember distinctly interrogating Mr. Scorer respecting the meaning or signification of the name Rem-Sho, and of insinuating that it would be likely to deceive the unwary, after his explanation that Rem stood for Remington. He satisfied us very soon with respect to that, however, by explaining the name and membership of the company. 667

Q. 17. Did Mr. Scorer give you any catalogue or business card before you purchased the Rem-Sho machine, or about the time of its purchase?

A. That I do not recall. I am confident that Mr. Scorer, like all other agents for typewriters or typewriting supplies, would be referred to our chief stenographer in the first instance. Now that I think of it, I believe she did submit to me a catalogue and requested my attendance at the conference between her and Mr. Scorer to hear his explanation of the merits of the machine. 668

Q. 18. Do you recall whether any catalogue came with the machine?

A. I do not.

*Cross-Examination by Mr. Donnelly.*

X-Q. 19. You being a busy man, I presume you left the details concerning this Rem-Sho machine largely to your stenographer? 669

A. I did.

X-Q. 20. When you interrogated Mr. Scorer concerning the abbreviated name Rem-Sho, I presume he explained to you that it was an abbreviation of the name Remington-Sholes?

A. He did.

X-Q. 21. And it was in connection with that statemen that you made your suggestion stated in your previous answer in regard to the effect of that name or which it might have upon the unwary? Is that correct?

670 A. It was the occurrence of the name Remington in connection with the name Sholes that suggested my remark. It did not have on my mind the impression that I suggested to Mr. Scorer. That was made merely for the sake of chaffing.

X-Q. 22. But you did know, of course, that for many years there had been a machine on the market under the name Remington?

A. Yes; I have had several hundred dollars' worth of knowledge.

X-Q. 23. And it was, I suppose, in connection with that name and the use of it by another concern that you
671 made this chaffing suggestion to Mr. Scorer? Is that so?

A. It certainly was.

Signature waived.

Adjourned to meet Tuesday, May 29, 1900, at 9 o'clock A. M.

And now, to wit, Tuesday, May 29, 1900, met pursuant to adjournment at the office of H. D. Gamble, Esq., Special Examiner. Present, same parties.

672 DAVID W. McNAUGHER, a witness of lawful age, being first duly cautioned and sworn, and called on behalf of defendant, testified as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, age, residence and occupation.

A. David W. McNaugher; age, forty; residence, Allegheny City; occupation, civil engineer.

Q. 2. Are you a member of the firm of Halstead & McNaugher of this city?

A. Yes, sir.

Q. 3. How long has said firm been in existence and 673
how long have you been a member of it?

A. Since 1896 the firm has been in existence. Have been a member since it was begun.

Q. 4. Does the firm of Halstead & McNaugher use typewriting machines?

A. Yes, sir.

Q. 5. How long has said firm been using typewriting machines and what makes of machine?

A. Has been using machines since we started in business; been using the Remington and the Rem-Sho.

Q. 6. When did you first use the Remington and 674
when did you first use the Rem-Sho?

A. The firm of Halstead & McNaugher succeeded Ferris & Co., and they used the Remington; we continued the use of the Remington until 1898.

Q. 7. State the circumstances under which you ceased to use the Remington machine and what became of that machine.

Complainant's counsel objects to any evidence of this witness in reference to any Rem-Sho machine purchased by his firm through Mr. Scorer in so far as any evidence given by the witness may tend in any way to contradict or rebut the evidence 675
of Mr. Scorer, upon the ground that all evidence concerning the Rem-Sho machines purchased by the firm of Halstead & McNaugher upon the ground that the evidence given by Scorer in regard to the purchase of a Rem-Sho machine by said firm was drawn out and solicited by the defendant's counsel in cross-examination, and thereby and in so far as that matter was concerned he made Scorer his own witness or witness of defendant, and he cannot now give evidence tending to contradict or rebut the evidence of Scorer; and therefore

676 the evidence of this witness, in so far as that transaction is concerned, is incompetent and improper. It is understood that this objection shall apply to all evidence which the witness may give in regard to this matter without repetition.

A. We were in need of a machine, as the Remington was out of order, and we were also thinking of replacing the machine in the New York office. Mrs. Vance recommended us to try the Rem-Sho, and the arrangements for the purchase of the Rem-Sho, I believe, were made with Miss Stewart and then approved by me.
677 The Remington that we had was given in trade for the Rem-Sho which we purchased.

Q. 8. Did you have any conversation with the salesman who represented the Rem-Sho machine?

A. Yes, sir.

Q. 9. Do you remember his name?

A. I wouldn't until I saw his name in this case.

Q. 10. Do you now recall it?

A. Yes.

Q. 11. What is the name?

A. Scorer.

Q. 12. State when this purchase of a Rem-Sho ma-
678 chine by Halsted & McNaugher occurred.

A. The date of the bill is February, 1898.

Q. 13. Did you receive a bill and invoice for that machine?

A. We did.

Q. 14. Can you produce it?

A. Yes, sir.

Q. 15. Please do so.

A. Here it is.

The invoice produced by the witness is offered in evidence, and the same marked "Defendant's Exhibit Halstead & McNaugher Invoice."

Q. 16. At the time your firm purchased the Rem-Sho machine, what was your understanding and belief as to its source of manufacture? 679

A. If I remember, it was manufactured in Chicago, and the Howe Scale Company of this city were the agents.

Q. 17. At the time of your purchase of this Rem-Sho machine, or before such time, had you had any business dealings with the Pittsburg office at which the Remington typewriter was sold?

A. Yes, sir.

Q. 18. Did you know where such office was located and the manager of such office? 680

A. The office was located on Wood street, and Mr. Martin was the manager.

Q. 19. Did you know at the time of the purchase of this Rem-Sho machine, anything in regard to the Howe Scale Company, or their office or their management?

A. Didn't know the manager; knew they had an office in the city.

Q. 20. At the time of your purchase of the Rem-Sho machine, what comparison, if any, was made by the salesmen as to its merits with respect to other machines?

A. Well, I think he talked his machine up about as good as an agent in general would. 681

Q. 21. Do you recall that he compared it with any other machine?

A. He compared it with the Remington.

Q. 22. At the time of your purchase of the Rem-Sho machine, what was your understanding or belief as to whether such machine was being manufactured and sold by the same parties who manufactured and sold at that time the Remington machine?

A. My understanding was that it was not manufactured and sold by the same parties that manufactured

682 the Remington, but was sold in competition with the Remington.

*Cross-Examination by Mr. Donnelly.*

X-Q. 23. How long have you been familiar with the Remington typewriter?

A. Since about 1890.

X-Q. 24. When did you first learn of the so-called Rem-Sho typewriter?

A. January or February, 1898.

X-Q. 25. At the time these negotiations were pending or entered into for the purchase of the so-called Rem-
683 Sho typewriter, did you make any inquiry as to the meaning of the name Rem-Sho?

A. Not that I remember, but I believe it was volunteered.

X-Q. 26. What did you then learn was the meaning of the name Rem-Sho?

A. I don't know the meaning of it; it has no meaning.

X-Q. 27. Didn't you know, or haven't you ever learned, that it is an abbreviated name for Remington-Sholes?

A. Yes, sir.

684 X-Q. 28. Who is Miss Stewart referred to in your answer to direct interrogatory 7?

A. She was our stenographer.

X-Q. 29. Was she your stenographer at the time the Rem-Sho or Remington-Sholes machine was purchased?

A. Yes, sir.

D. W. McNaugher.

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WILLIAM LEONARD BEITEL, a witness of lawful age, being first duly cautioned and sworn, and called on behalf of defendant, testified as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, age, residence and occupation.

A. William Leonard Beitel; age, twenty-eight; residence, Allegheny; occupation, bookkeeper.

Q. 2. For what concern are you employed as bookkeeper?

A. The Howe Scale Company.

686

Q. 3. How long have you been connected with the Howe Scale Company, and at what office?

A. Ten years; Pittsburg office.

Q. 4. What were your duties with the Howe Scale Company from the fall of 1897 until the summer of 1898?

A. I had charge of the books and correspondence.

Q. 5. Do you know a man named Andrew J. Scorer?

A. Yes, sir.

Q. 6. When did you first meet Mr. Scorer and under what circumstances?

687

A. In December, 1897; he was brought to us by Emerson C. Eachel.

Q. 7. How long did Mr. Scorer work for the Howe Scale Company, and what were his duties while with such company?

A. From December, 1897, until May, 1898; his duties were that of typewriter salesman.

Q. 8. What kind of typewriter was Mr. Scorer employed to sell for the Howe Scale Company?

A. Rem-Sho.

688 Q. 9. Did the Howe Scale Company furnish Mr. Scorer with any business card?

A. Yes, sir.

Q. 10. Can you produce a sample of said business card?

A. Yes, sir.

Q. 11. Please do so.

A. Here it is.

Q. 12. State when this business card was furnished to Mr. Scorer and how you are able to fix the date.

A. It was furnished to him December 9th, 1897. I have a voucher in my pocket for the charge for the
689 cards and I got the card this morning from the printer.

Q. 13. Do you remember to have seen cards like this before?

A. Yes, sir.

Q. 14. About when?

A. I seen the card in December, 1897; and I saw the card before we passed the bill for the voucher.

The card produced by the witness is offered in evidence, and the same is marked "Defendant's Exhibit Scorer Pittsburg Card."

Q. 15. Did you ever see any catalogues illustrating
690 and describing the Rem-Sho typewriter?

A. Yes, sir.

Q. 16. When did you first see such catalogues?

A. December, 1897. We had catalogues in the store before that time; the catalogues were ordered on October 9th, 1897.

Q. 17. I call your attention to a letter upon the letter-sheet of the Howe Scale Company and ask you to state what you know about this letter.

A. I wrote the letter myself. The machine we ordered as a sample machine; also ordered another supply of circulars.

Q. 18. Was that letter mailed to the Remington-Sholes Company by you? 691

A. Yes, sir.

The letter referred to by the witness in his last answer is offered in evidence, and the same is marked "Defendant's Exhibit Howe Scale Company Order for Catalogues."

Q. 19. I call your attention to another letter bearing date October 11th, 1897, and ask you to state what you know about it and about the signature at the bottom of it.

A. It is signed by the Remington-Sholes Company. 692
The letter was received by us on October 12th, 1897.

Q. 20. In this last-mentioned letter reference is made by the Remington-Sholes Company to a shipment of a supply of catalogues to the Howe Scale Company, Pittsburg. State, if you know, whether said catalogues were received, and if so, about when.

A. I am unable to state the date when they were received except to say that on the 29th day of November, 1897, I mailed a catalogue to E. G. Maitland, Oil City, care National Transit Company.

The letter referred to in Q. 19 is offered in evi-
dence, and the same is marked "Defendant's Ex- 693
hibit Remington-Sholes Company Letter Regarding Catalogues."

Q. 21. I call your attention to "Complainant's Exhibit Rem-Sho Catalogue," and ask you to state whether you have ever seen a catalogue like this before, and if so, where?

A. Yes, sir; I have seen a catalogue like this one.

Q. 22. Where?

A. At our office, Pittsburg.

Q. 23. When were such catalogues in the Pittsburg

694 office of the Howe Scale Company, and for what purpose?

A. I am unable to state just exactly what date they arrived, but from November 29th, 1897. February the 21st we ordered a new supply of catalogues.

Q. 24. For what purpose were these catalogues in the office of the Howe Scale Company, Pittsburg?

A. They were there for the typewriter salesmen to give out to prospective customers.

Q. 25. Where were the catalogues kept?

A. In a case in the office—a catalogue case.

Q. 26. Was that case open or locked?

695 A. It was open.

Q. 27. Did Mr. Scorer have access to that case?

A. Yes, sir.

Q. 28. Was any other typewriter salesman employed by the Howe Scale Company?

A. No, sir.

Q. 29. State, if you know, when the Howe Scale Company—I mean its Pittsburg office—ran out of Rem-Sho catalogues after October 11th, 1897?

A. February 21, 1898.

Q. 30. Did they get a new supply after that?

696 A. Yes, sir.

Q. 32. About when?

A. I am unable to state the exact date, but on March 4th, 1898, we mailed to the Mountain City Business College, Altoona, Pa., a Rem-Sho catalogue.

Q. 33. If you had been out of catalogues between October, 1897, and the latter part of February, 1898, you would have known it, would you not?

The question is objected to as incomptent and improper, because it calls for the opinion or conclusion of the witness, and not for his recollection or knowledge.

A. Yes, sir.

Q. 34. From whom were these catalogues received? 697

A. From the Remington-Sholes Company, Chicago.

Q. 35. Whose business was it at the office of the Howe Scale Company, Pittsburg, to unpack the machines that were received from the Remington-Sholes Company, or who did unpack those machines?

A. I unpacked the first machine that was received from the Remington-Sholes Company myself.

Q. 36. Did you unpack any others or see them unpacked?

A. Yes, sir.

Q. 37. State, if you know, what marks were upon the boxes in which these machines were contained? 698

A. Do you want all the marks?

Q. 38. Yes.

A. Rem-Sho typewriter, Chicago, Ill., U. S. A. Then there was "keep dry;" it also gave the number and style of the machine and the keyboard.

Q. 39. What, if anything, came in the boxes in which the typewriting machines were received at the office of the Howe Scale Company, Pittsburg?

A. There was typewriter brush, bottle of oil, one extra rubber foot and from two to three catalogues in every box. 699

Q. 40. I call your attention to "Defendant's Exhibit Halstead & McNaugher Invoice," and ask you to state, if you know, by whom such invoice was written?

A. Yes, sir; I made out the invoice myself.

Q. 41. Whose business at the Howe Scale Company office was it to make out the invoices of typewriting machines?

A. I made out all the invoices.

Q. 42. How does this "Defendant's Exhibit Halstead & McNaugher Invoice" compare as to the designation of the machines therein mentioned with other invoices made out by you?

700 Objected to as immaterial and irrelevant. Also as calling for secondary evidence, and not the best evidence.

A. All typewriters were billed as Rem-Sho machines.

Q. 43. I call your attention to a memorandum sales slip, upon which is written the name and address of Halstead & McNaugher, the date, 2/17, 1898, and the words, "No. 3 Rem-Sho, No. 190; No. 5 Remington, No. 5919;" and ask you to state what this slip is, and whether you recognize the signature written thereon?

701 A. The slip is a charge slip which is filled in by the man making the sale; the signature is Mr. A. J. Scorer.

The charge slip referred to in last answer is offered in evidence, and the same is marked "Defendant's Exhibit Halstead & McNaugher Charge Slip."

*Cross-Examination by Mr. Donnelly.*

X-Q. 44. Did the Howe Scale Company or its salesmen use any other business card in connection with the sale of the Rem-Sho typewriter, so called, from the fall of 1897 until the summer of 1898, other than the one
702 which you have produced bearing the name of Mr. A. J. Scorer?

A. Not to my knowledge.

X-Q. 45. You understood, I presume, that the name or designation Rem-Sho, which was used upon and in connection with the so-called Rem-Sho machines sold by the Howe Scale Company, was an abbreviation of the name Remington-Sholes; is that correct?

A. Yes, sir.

X-Q. 46. How many invoices and bills like "Defendant's Exhibit Halstead & McNaugher Invoice" did you make out, on account of sales of Rem-Sho typewrit-

ers made by the Howe Scale Company at Pittsburg from the fall of 1897 until the summer of 1898? 703

The question is objected to as immaterial and irrelevant, and not proper cross-examination, and is an unwarranted attempt to inquire into the business of the Howe Scale Company and the extent of sales made by it.

A. I am unable to state how many invoices were made for typewriter sales. We keep no record of the number of invoices made for typewriter sales.

X-Q. 47. Please give your best recollection as to the number of such bills and invoices of sales you made out during the period mentioned in my last previous cross-question. 704

Same objection as last.

A. I can't give that; I haven't any recollection as to the amount made. As I stated before, we do not keep a record of the number of sales made, but the same can be obtained from our invoice book.

X-Q. 48. Please give me some approximate idea of the number of such invoices and bills which you made out. I do not require you to be definite as to the number, but state about how many you think of such invoices and bills you made out. 705

Same objection as last.

A. I don't suppose that they would exceed ten.

X-Q. 49. The machines which these invoices mentioned or represented were actually sent out and delivered to customers, and the prices mentioned in the invoices were paid, I suppose?

A. Yes, sir.

W. L. BEITEL.

706 SAMUEL M. EVANS, a witness duly cautioned and sworn on behalf of defendant, testified as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, age, residence and occupation.

A. My name is Samuel M. Evans; age, fifty-six; residence, Acalon, Pa.; occupation at present, life insurance and real estate.

Q. 2. State, if you know, who was the manager of the Pittsburg office of the Howe Scale Company during
707 the period beginning with the fall of 1897 and ending with the summer of 1898.

A. I was manager during that period.

Q. 3. Do you know Mr. Andrew J. Scorer?

A. Yes.

Q. 4. Was he ever employed as a salesman by the Howe Scale Company, and, if so, how long?

A. He was employed by the Howe Scale Company as a sales agent for the Rem-Sho typewriter, but at the present time I can neither give the date when he commenced work nor the time his connection was severed with the Howe Scale Company.

708 Q. 5. Who was the manager of the Pittsburg office of the Howe Scale Company during the entire time that Mr. Scorer was employed as typewriter salesman by said company?

A. I was the manager.

Q. 6. I call your attention to "Complainant's Exhibit Remington-Sholes Company's Catalogue Sept. 16, 1898," and ask you to state whether you have ever seen such catalogue before and where?

A. I have seen them before. Used the catalogues the same as this one during the time that we sold Rem-Sho typewriters.

Q. 7. Where were said catalogues kept at the Pitts- 709
burg office of the Howe Scale Company?

A. They were kept at the office in a case in a convenient place of access for salesmen.

Q. 8. For what purpose were such catalogues kept there?

A. To be used by salesmen in soliciting business and to be distributed to prospective customers.

Q. 9. When were said catalogues used at the office of the Howe Scale Company, Pittsburg, and how continuously were they at such office between December 1, 1897, and up to the time that the Howe Scale Company 710
ceased to handle the Rem-Sho typewriter?

A. They were used during all this time.

Q. 10. Have you any recollection of the Howe Scale Company being out of these catalogues during the months of December, 1897, or January, 1898?

A. I have not.

Q. 11. What is your best recollection as to seeing the catalogues at the office of the Howe Scale Company from December 1, 1897? I mean your recollection as to these catalogues being in stock or on hand at the company's office after December 1, 1897.

A. I can't answer positively regarding those parti- 711
cular dates, but think we had more or less on hand at all times while handling the Rem-Sho typewriter.

Q. 12. Did you consider it part of your duty to see that there was a stock of catalogues kept on hand for the use of the salesmen?

A. I did. And if it came to my knowledge at any time that the stock was short, I immediately used means to get a supply.

*Cross-Examination by Mr. Donnelly.*

X-Q. 13. At the time you were manager of the Howe Scale Company in Pittsburg and it was selling the so-

712 called Rem-Sho typewriter, I presume that you understood that the name Rem-Sho was an abbreviation of the name Remington-Sholes; is that correct?

A. So far as my knowledge goes of the name, I only know that they adopted the name Rem-Sho typewriter.

X-Q. 14. Well, you understood, did you not, that it was an abbreviation of the name Remington-Sholes, which was a part of the corporate name of the Remington-Sholes Company?

A. Well, that is something that I never gave a thought regarding. I knew it was the Remington-Sholes Typewriter Company and I also know that they
713 adopted the name Rem-Sho. Whether they meant it for an abbreviation or not, that is a question I can't answer.

X-Q. 15. I am simply asking you what you understood the abbreviation Rem-Sho to be—whether you understood it to be an abbreviation of the name Remington-Sholes at the time you were engaged in the sale of the so-called Rem-Sho typewriter?

A. I think my answer to the previous question fully answers that.

X-Q. 16. During the time that you were manager
714 for the Howe Scale Company for the sale of the Rem-Sho typewriter, did it ever occur to you that the name Rem-Sho was an abbreviation of any name, and, if so, will you kindly state what name you thought or supposed it might be an abbreviation of?

A. From the fact that it was the Remington-Sholes Company the name Rem-Sho might be an abbreviation, but whether or not it was so intended I am unable to say.

X-Q. 17. Rem is an abbreviation of Remington, is it not?

A. Yes.

X-Q. 18. Sho is an abbreviation of Sholes, is it not? 715
A. It is the first three letters of the word Sholes.

SAMUEL M. EVANS.

A recess was here taken until 3 o'clock P. M., same day.

Afternoon session.

DAVID M. ALKIRE, a witness duly cautioned and sworn on behalf of defendant, testified as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, age, residence and occupation. 716
A. Typewriter business; age, thirty-eight; residence, Pittsburg, Pa.
Q. 2. What typewriter are you now engaged in selling?
A. The Elliott & Hatch book typewriter.
Q. 3. Were you ever in the employ of the Remington-Sholes Company, of Chicago?
A. Yes, sir.
Q. 4. When did you enter the employ of the Remington-Sholes Company?
A. May the 1st, 1898. 717
Q. 5. When did you leave its employ?
A. February the 15th, 1899.
Q. 6. In what capacity were you employed by the Remington-Sholes Company and in what city?
A. Sales manager, Pittsburg.
Q. 7. Did you ever meet a Mrs. M. C. Vance?
A. Yes, sir.
Q. 8. State where and under what circumstances.
A. I met Mrs. Vance in the court house in this city to confer with her in regard to a Rem-Sho machine that she was using at that time.

718 Q. 9. State how you introduced yourself to Mrs. Vance.

A. As the representative of the Remington-Sholes Company.

Q. 10. Do you recall whether or not you gave Mrs. Vance any business card when you first called upon her?

Complainant's counsel objects to the question as immaterial and irrelevant and incompetent.

A. I cannot remember the manner in which I introduced myself.

719 Q. 11. What did you state to Mrs. Vance to be the typewriting machine that you represented?

Same objection as last.

A. I cannot remember my statement, but it was understood by Mrs. Vance that the machine in question was a Rem-Sho.

Q. 12. Did Mrs. Vance, in the conversation you had with her, exhibit any doubt or misunderstanding in regard to the machine or by whom the machine was made?

Complainant's counsel objects to the question on the grounds last stated; also that the question is
720 improper because it calls for the opinion or conclusion of the witness.

A. She did not.

Q. 13. Did Mrs. Vance express at the time of your conversation with her any familiarity with typewriting machines, and, if so, what machines, if any, were mentioned?

Same objection as last; also as improper, because it calls for hearsay testimony and the declaration of a third person.

A. She claimed to be thoroughly conversant with the Remington and the Rem-Sho typewriters.

Q. 14. What, if anything, did she say in regard to the Remington machine? 721

Same objection as last; also complainant's counsel enters his protest upon the record against proving the statements of Mrs. Vance, who has already been examined as a witness in this case and has spoken for herself.

A. I cannot remember what she said. The conversation was confined mostly to the Rem-Sho.

Q. 15. Did Mrs. Vance say anything to you in regard to her reasons for wishing to have a Rem-Sho or for not buying a Remington? 722

Same objection as above and same protest.

A. Her main reason, as I remember it, was that she objected to doing business with Mr. Martin.

Q. 16. Who was Mr. Martin?

A. The representative of the Remington typewriter.

Q. 17. At what place did Mr. Martin at that time represent the Remington typewriter?

A. In this city.

Q. 18. I call your attention to "Complainant's Exhibit Remington-Sholes Company Catalogue, September 16, 1898," and ask you to state whether or not you have ever seen such catalogues before. 723

A. The catalogue is the same as the ones used by the Remington-Sholes Company during my regime with them.

Q. 19. For what purpose were such catalogues used at the Pittsburg office of the Remington-Sholes Company while you were manager of such office?

A. As a means of explaining the construction of the machine.

Q. 20. By whom were these catalogues used and in what way?

724 A. They were used by myself and the attaches in connection with the Remington-Sholes business at that time.

Q. 21. What did you do with the catalogues?

A. Distributed them among prospective purchasers.

Q. 22. Where were such catalogues kept during the time that you had charge at the Pittsburg office of the Remington-Sholes Company?

A. They were kept in the office in some accessible place for the convenience of those having use for them.

Q. 23. Do you recall whether the Pittsburg office
725 of the Remington-Sholes Company was ever without these catalogues during the time that you were manager of such office?

A. I do not recall that we were ever out of them. If we should have been, I believe I would remember it.

Q. 24. Do you know Mr. Andrew J. Scorer of this city?

A. Yes, sir.

Q. 25. When and under what circumstances did you meet Mr. Scorer?

A. At the time of my taking charge of the Remington-Sholes Company's business in this city; Mr. Scorer
726 had been employed by the Howe Scale Company in the capacity of typewriter salesman, and was re-engaged by me as salesman for the Remington-Sholes Company.

Q. 26. Did you give to Mrs. Vance a catalogue of the Rem-Sho typewriter?

A. I do not remember that I did.

*Cross-Examination by Mr. Donnelly.*

X-Q. 27. As I understand your testimony, you first entered the service of the Remington-Sholes Company in May, 1898; is that correct?

A. Yes, sir.

X-Q. 28. How long after you entered the service of 727
the Remington-Sholes Company was it that these interviews with Mrs. Vance occurred? My question simply calls for dates.

A. I cannot give dates.

X-Q. 29. Can you give any approximate dates—was it one month or two months?

A. I could say that it was within two months.

X-Q. 30. Had you ever been in the typewriter business prior to the time when you were employed by the Remington-Sholes Company?

A. Yes, sir.

X-Q. 31. For how long a time and in what com- 728
panies?

A. I was with the Smith-Premier Company for three and one-half years prior to the time I was engaged with the Remington-Sholes Company.

X-Q. 32. For how long a period have you been acquainted with the so-called Remington typewriter?

A. For about fifteen years.

X-Q. 33. And during your acquaintance with that machine and from your observation, state whether or not the so-called Remington typewriter is one that has been and is largely used in the localities where you have had 729
observation and experience.

Defendant's counsel objects to the question, and without repetition it is understood that the same objection applies to all similar questions as immaterial, irrelevant and not proper cross-examination.

A. It is.

X-Q. 34. From your observation and experience in the typewriter business, state whether or not the name Remington, associated with the typewriting machines, is one which you consider of value.

730 Objected to as improper, as no foundation for any such questions exists in the witness' direct examination.

A. I do.

X-Q. 35. When did you first learn of the so-called Rem-Sho typewriter and the Remington-Sholes Company, or its predecessors?

A. I think it was the latter part of 1896 or the early part of 1897.

X-Q. 36. Prior to that time, had you ever known of any concern using the name "Remington" upon or in
731 connection with the sale of typewriters, except by Wyekoff, Seamans & Benedict, who were the manufacturers and vendors of the so-called Remington typewriter?

A. I did not.

D. M. ALKIRE.

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UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict
*vs.*
The Howe Scale Company of 1886.

NEW YORK, June 4th, 1900.

Testimony taken in behalf of defendant in the above-entitled cause before L. M. Beehan, Notary Public and Special Examiner by consent and under stipulation heretofore made, and pursuant to the 67th Rule as 734
amended of the Supreme Court of the United States in Equity.

Present: H. D. Donnelly, Esq., for complainant; George P. Fisher, Jr., Esq., for defendant.

W. DE SAUSSURE TRENHOLM, a witness called on behalf of the defendant, having been duly sworn, testifies as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. Please state your name, age, residence and occupation.

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A. W. de Saussure Trenholm; age, thirty-three; residence, 52 West 93rd street, New York City; occupation, I am employed by the Fidelity & Casualty Company, of New York.

Q. 2. Were you ever engaged in the sale of Rem-Sho typewriters, and, if so, when and where and by whom were you employed?

A. Yes; from the time the Remington-Sholes Typewriter Company opened their office in New York City with the Howe Scale Company at No. 341 Broadway; I think it was in November, 1898, from then for about a year. It was either 1898 or 1897. I was employed

736 by the Remington-Sholes Typewriter Company during this period.

Q. 3. What was the nature of your employment during this period; I mean what was the character of your duties?

A. I occupied the position of manager of the New York office and my duties consisted in managing the office, aiding and directing the salesmen in disposing of machines.

Q. 4. Was your office at that time in the same room as was occupied by Page, Dennis & Company at 341 Broadway?

737 A. It was.

Q. 5. State what signs, if any, advertising the typewriter that you were engaged in selling, were exhibited in or about the office or store occupied by you and by Page, Dennis & Company.

A. There was a large sign upon the wall over that portion of the room occupied by the typewriter office and there were several printed signs in and about the office, and also in the window.

Q. 6. I call your attention to a canvas sign bearing the words "Rem-Sho Typewriters. Manufactured by
738 The Remington-Sholes Co., Chicago, Ill.," and ask you to state whether you have ever seen such sign before.

A. Yes. That sign is the one to which I referred in the answer immediately preceding and which was upon the wall over the office in the room of Page, Dennis & Company at 341 Broadway.

The sign identified by the witness is offered in evidence and the same is marked "Defendant's Exhibit Rem-Sho Sign from Office of Page, Dennis & Co."

Q. 7. In what way was the office for the sale of Rem-

Sho typewriters distinguished or set apart in the office of Page, Dennis & Company? 739

A. There was a railing about three feet high surrounding the typewriter office and dividing it from the office of Page, Dennis & Company.

Q. 8. And where did this sign appear with respect to the typewriter office?

A. Immediately above that portion of the room occupied by the typewriter office and right in the center of that portion cut off by the railing for use of the typewriter office.

Q. 9. State, if you know, when this sign was placed upon the wall above the typewriter office, as you have described, and how long it remained there. I mean with reference to the time of your employment in the sale of Rem-Sho typewriters. 740

A. It was erected within a week or ten days after the office was started and remained upon the wall during the entire time I was there.

Q. 10. I call your attention to "Defendant's Exhibit Rem-Sho Paste-Board Sign," and ask you to state whether you have ever before seen a sign like this, as to shape, size and printed matter.

A. Yes. We had signs similar in size and wording at the office of the Remington-Sholes Company, No. 341 Broadway, New York City. They were exhibited in the show window and in the office proper. 741

Q. 11. After examining this "Defendant's Exhibit Rem-Sho Paste-Board Sign," please state what difference, if any, you discover between such sign and the signs referred to in your last answer.

A. The only difference that I can see is the word "New."

Q. 12. I call your attention to "Complainant's Exhibit Rem-Sho Catalogue," and ask you to state whether

742 you have ever seen such catalogue before or catalogues like it, and, if so, where.

A. Yes. We had catalogues similar to this one at the office, No. 341 Broadway, during the time I was there.

Q. 13. During what part of the time that you were there were catalogues like this exhibited or used?

A. During the entire time that I was there.

Q. 14. State what difference, if any, you discover between "Complainant's Exhibit Rem-Sho Catalogue" and the catalogues used at 341 Broadway while you were in charge of the New York office of the Remington-
743 Sholes Company.

A. There appears to be no difference. Upon examining this it seems to be identical with the ones we had at the office while I was there.

Q. 15. For what purpose and in what manner were these catalogues used while you were manager of the New York office of the Remington-Sholes Company at 341 Broadway?

A. They were used by the salesmen in soliciting business and were given to all inquiring callers. They were upon the table in the office and the salesmen used
744 them at liberty.

Q. 16. I call your attention to "Defendant's Exhibit Page, Dennis & Company Card," and ask you to state whether you have ever seen cards like this before or not, and, if so, when and where.

A. Yes, I have seen these cards before. They were used at the Remington-Sholes office with Page, Dennis & Company, 341 Broadway, this city, during the time that I was there.

Q. 17. I call your attention to "Defendant's Exhibit Rem-Sho Blotter No. 1," and ask you to state whether you have ever seen blotters like this, and, if so, when and where.

A. Yes. We had blotters similar to this at the Remington-Sholes office, 341 Broadway, this city, during the time I was there as manager. 745

Q. 18. In what way were such blotters used?

A. They were given away to customers and prospective customers.

Q. 19. During the time that you were in charge of the New York office of the Remington-Sholes Company at the office of Page, Dennis & Company, were there any typewriting machines—I mean Rem-Sho typewriting machines—on exhibition at such office?

A. They were always on exhibition there, in the window and in the office, during the entire time I was there. 746

Q. 20. I call your attention to "Defendant's Exhibit Remington-Sholes Company Name-Plate," and ask you to state how such name-plate compares with the name-plates upon the Rem-Sho machines offered for sale and sold at the New York office of the Remington-Sholes Company while you were the manager of such office.

A. It appears to be identical with the name-plates which were upon the Remington-Sholes machines which we sold and offered for sale from the office at 341 Broadway, this city. 747

Q. 21. Was there ever displayed in the office of Page, Dennis & Company or the Remington-Sholes Company at 341 Broadway, New York, during the time that you were connected with such office any sign which read "Remington Typewriter Company"?

A. No, no such sign was there.

Q. 22. During the time that you were engaged as manager for the sale of Rem-Sho typewriters at 341 Broadway, New York, who were the office salesmen having charge of the sale of typewriting machines?

A. Mr. T. O. Parker and I usually looked after the

748 sales made in the office, and sometimes Mr. Hatch—I think his initials are H. E.—looked after these if Mr. Parker and I both happened to be out.

Q. 23. Did you ever receive from any officer of the Howe Scale Company or from any officer of the Remington-Sholes Company any oral instructions in regard to the sale of typewriting machines or in regard to any explanation to be made in answer to inquiries respecting the name of the Remington-Sholes Company?

A. When the office was opened at 341 Broadway Mr. Franklin Remington came here from Chicago and in a conversation with me explained how the Remington-
749 Sholes typewriter got its name and gave me to understand that that explanation should be made in response to any inquiries on the subject, and that the Remington-Sholes typewriter and the Remington Standard typewriter were distinct and apart; that their interests were not at all connected, and that we should avoid the impression that they were in any way connected or associated.

Q. 24. I now ask you whether you can recall more exactly the time when you took charge of the office of the Remington-Sholes Company at 341 Broadway, New
750 York?

A. On figuring it out from the time at which I entered upon the duties of my present position, which was in November, 1898, I calculate that it was during the latter part of 1897 that I entered the service of the Remington-Sholes Company and opened their office at No. 341 Broadway, this city.

*Cross-Examination by Mr. Donnelly.*

X-Q. 25. In whose employ were you before you took charge of the office of the Remington-Sholes Typewriter Company at No. 341 Broadway, New York? I mean

immediately preceding the time when you entered said New York office. 751

A. I was with the Smith-Premier Typewriter Company immediately before entering the service of the Remington-Sholes Company.

X-Q. 26. Then, if I understand your testimony, you had never been in the employ of the Remington-Sholes Typewriter Company prior to the time when you entered the New York office, as stated in your direct testimony; is that correct?

A. It is correct.

X-Q. 27. How long were you in the service of the Smith-Premier Typewriter Company and what were the duties or what was the character of the services performed for that company while you were in its employ? 752

A. As well as I remember it, I was there about a year, or perhaps not quite so long. I first went there as a special salesman to sell machines to the large corporations in this city and was assigned to duty as a regular salesman when the management changed hands, after I had been there about four months.

X-Q. 28. After you left the New York office of the Remington-Sholes Typewriter Company, did you still continue in the typewriter business, and, if so, where and with what company? 753

A. I discontinued the typewriter business when I left the service of the Remington-Sholes Typewriter Company.

X-Q. 29. Where was the office of Wyckoff, Seamans & Benedict located at the time you were manager in the New York office, No. 341 Broadway? Please state, if you know.

A. On Broadway, the block below the one upon which the Remington-Sholes had their office at No. 341, but the number I do not know.

754 X-Q. 30. Was the office of Wyckoff, Seamans & Benedict then on the same side of Broadway as the office of Page, Dennis & Company, in which the so-called Rem-Sho typewriter was exhibited and sold?

A. It was.

X-Q. 31. And is it or not your recollection that the office of Wyckoff, Seamans & Benedict was then at No. 327 Broadway?

A. That probably is the number, though I really do not know.

X-Q. 32. Wyckoff, Seamans & Benedict were then selling at their New York office and offering for sale
755 what was and is known as the Remington typewriter; is such the fact?

A. It is.

X-Q. 33. What was the business of Page, Dennis & Company, located at 341 Broadway, at the time you were manager of the typewriter department of the Remington-Sholes Typewriter Company, located in said office?

A. As far as I know, their business consisted of selling scales and refrigerators.

X-Q. 34. The office of Page, Dennis & Company,
756 No. 341 Broadway, was then the office of the Howe Scale Company, as I understand your testimony; is that correct?

A. That is my impression.

X-Q. 35. State, if you know, what, if anything, Mr. Page, of Page, Dennis & Company, had to do with the typewriter or typewriter department of which you were in charge, as stated hitherto in your testimony.

A. I don't know what relation existed between Mr. Page and the typewriter department. They were made between him and Mr. Fay, of the Remington-Sholes Typewriter Company, and he had nothing to do with the department, so far as I was concerned.

X-Q. 36. What relations, if any, existed between the Howe Scale Company and the department of which you had charge for and on behalf of the Remington-Sholes Typewriter Company during the time you had charge of said New York office as manager? 757

A. None that I know of.

X-Q. 37. Those matters were adjusted between the Remington-Sholes Typewriter Company and the Howe Scale Company, as I understand you?

A. They were.

X-Q. 38. I find on "Complainant's Exhibit Rem-Sho Catalogue," to which your attention has been directed, the statements that the Howe Scale Company were the general selling agents and that Page, Dennis & Company were the sales agents at No. 341 Broadway, New York, of the so-called Rem-Sho typewriter; is that according to your understanding or was it your understanding that such was the fact at the time you were manager of the department at No. 341 Broadway? 758

The question is objected to as not proper cross-examination, and for the further reason that it has not been shown that the witness is qualified to testify as to the relations existing between the Remington-Sholes Company and the Howe Scale Company. 759

A. All I know on the subject is what appears upon the page of that catalogue which you refer to.

X-Q. 39. So far as you now remember, is it not a fact that the same statement appeared on all the catalogues which were circulated and handed out at the time you were in charge of the department as manager at No. 341 Broadway?

A. The part about Howe Scale Company being the general selling agents was on all of the catalogues, but that part about Page, Dennis & Company being sales

760 agents was stamped with a rubber stamp in the catalogues after the stamp was made, and this was not for several weeks subsequently to the opening of the office; exactly when I cannot say.

X-Q. 40. These catalogues like "Complainant's Exhibit Rem-Sho Catalogue," in which it appears that the Howe Scale Company were the general selling agents, were furnished your department at No. 341 Broadway by whom?

A. By the Remington-Sholes Typewriter Company at Chicago, Illinois.

761 X-Q. 41. What signs, if any, were displayed upon the window in the typewriter department of the Remington-Sholes Company at No. 341 Broadway during the time you were manager?

A. Catalogues opened at different places and also pasteboard signs indicating the make and valuable features of the typewriter.

X-Q. 42. Was any sign painted on the window?

A. Yes; there was a sign which, as I remember it, read "Remington-Sholes Typewriters."

X-Q. 43. When was that sign painted or placed on the window and for how long a period of time did it re-

762 main there?

A. As near as I can remember, it was eight or ten weeks after the office was opened that the sign was put upon the window and it remained there up to the time I left.

X-Q. 44. State, if you know, why or for what reason the sign consisting of the words "Remington-Sholes Typewriters" were placed upon the window of the store at No. 341 Broadway occupied by Page, Dennis & Company.

A. Simply as a means of advertisement, as I understood it.

X-Q. 45. Was this sign upon the window in black letters or in gold letters? 763

A. My recollection is that they were in gold letters or perhaps silver.

X-Q. 46. Was this sign upon more than one window?

A. I think the sign was on both windows.

X-Q. 47. Were both of said windows devoted to the typewriter department or was one of said windows also devoted to the exhibition or advertising of scales of the Howe Scale Company?

A. One window was used for the exhibition of typewriters and the other for the exhibition of scales and refrigerators exclusively. 764

X-Q. 48. In your answer to direct question 23 you have stated that in a conversation with Franklin Remington he explained to you how the Remington-Sholes typewriter got its name and gave you to understand that the explanation he made to you should be made in response to any inquiries on the subject, and that the Remington-Sholes typewriter and the Remington Standard typewriter were distinct and apart, and that you should avoid the impression that they were in any way connected or associated. Will you kindly state all that Mr. Remington said on that occasion on that subject? 765

A. As well as I remember it, Mr. Remington said that Mr. Sholes had invented the machine and brought it to him with the idea of manufacturing it; that they proceeded to make the machines and Mr. Fay took some interest in the undertaking and at his suggestion the machine was called "Rem-Sho," as a compound abbreviation of the two names; that he and Mr. Sholes were the sons of the two men who had invented and started the manufacture of the Remington Standard typewriter, but that their interests were entirely discon-

766 nected, and that this should be told in response to any inquiries as to the origin of the name Rem-Sho. This is as near as I can recall the conversation.

X-Q. 49. In your last answer you say "the machine was called Rem-Sho as a compound abbreviation of the two names." Please state what you mean by the words "two names"?

A. I mean that the syllable "Rem" was taken, as I understood it, from the name Remington, and the syllable "Sho" was taken from the name Sholes, making what I should term a compound abbreviation, forming the name "Rem-Sho."

767 X-Q. 50. Please state what else, if anything, Mr. Franklin Remington stated at the first interview or any subsequent interview that you were to state to inquiring or prospective purchasers, when asked as to the origin of the name Rem-Sho or as to the connection the Remington-Sholes Company or the Rem-Sho typewriter had or as to the similarity existing between the names Remington on the two machines, Remington typewriter and Rem-Sho typewriter.

A. I am unable to recall everything that Mr. Remington said to me upon this subject. He stated just
768 what I have explained and gave me the impression, very positively and unmistakably, that the two companies were entirely disconnected, and that I should be careful not to allow any one with whom I talked to get an erroneous impression as to the true situation, as outlined in my last answer.

X-Q. 51. Why did you understand and why do you now understand that Mr. Franklin Remington gave you these words of caution which you have stated in your answer to direct question 23 and cross-question 48?

A. I understood that this information was given to me in order that I might be able to accurately answer

any questions on the subject, and for my own information in the discharge of the duties I was about to assume. 769

X-Q. 52. Did you not then understand that this explanation and this caution referred to in your previous answers was given you because the Remington-Sholes Typewriter Company was using the name Remington in its corporate name and upon and in connection with the sale of its machines?

A. No, no more than because the name Sholes was used. I understood the explanation to be for the benefit of enabling me to understand how the names Remington and Sholes became connected with the typewriter and the name, subsequently adopted, taken. 770

X-Q. 53. You knew at the time of this explanation that there was a machine upon the market known or designated as the Remington typewriter, did you not?

A. I did.

X-Q. 54. And you knew at the time of this explanation that the Remington-Sholes Typewriter Company was using the name Remington, both in its corporate name and upon its machines, did you not?

A. I did.

X-Q. 55. What did you understand his words to refer to when he cautioned you not to confuse the business or machine of the Remington-Sholes Typewriter Company with the Remington Standard typewriter? 771

A. I understood from what he said that I should explain to inquirers that the Remington-Sholes typewriter was not the Remington Standard typewriter.

X-Q. 56. Why did you understand he wished you to make that explanation?

A. I understood that he desired to avoid having me sell the machine to any one while they were under the impression that it was any other than the machine it really was.

772 X-Q. 57. Did you not then understand that the caution was given you because the Remington-Sholes Company was using the name Remington upon or in connection with its machines, and that in consequence thereof the machine might be confused or might be represented as having some connection with the Remington Standard typewriter?

A. No, I did not then so understand.

X-Q. 58. Did you later realize the fact that there might be some confusion by reason of two concerns using the name Remington?

773 Counsel for defendant objects to this question and to all other questions in which the Remington-Sholes Company has been referred to as using the name Remington, as misleading, in that the said company has used the name Remington-Sholes only and not the name Remington.

A. I did not realize it, but I heard that the Remington Standard people objected to the use of the name Remington by the Remington-Sholes Company. This information came to me through Mr. Page, who told me that Mr. Seamans had said something to him on the subject.

774 X-Q. 59. Now will you please tell me why Franklin Remington cautioned and instructed you that the Remington-Sholes typewriter and the Remington Standard typewriter were distinct and apart and their interests were not at all connected?

A. I understood that this information was given to me in order that I might understand exactly what machine I was selling and where its name originated.

X-Q. 60. Did you not then understand that that caution and instruction were given you because the Remington-Sholes Company were using the name Remington in connection with the name Sholes, and that by rea-

son thereof it might be confused or used to mislead and lead inquirers to suppose that the Remington-Sholes typewriter had some connection with the Remington Standard typewriter? 775

A. No, I did not.

Adjourned to Tuesday, June 5th, 1900, at 10 A. M.

New York, June 5th, 1900, 10 A. M. Met pursuant to adjournment. Present, counsel as before.

Cross-examination of Mr. Trenholm resumed.

X-Q. 61. During the time that you were employed by the Remington-Sholes Typewriter Company as manager of the typewriter department in the store of Page, Dennis & Company at 341 Broadway, New York, did you have any conversation with Mr. Fay or Mr. Page or any others on the subject of taking care to distinguish between the Rem-Sho typewriter, so called, and the Remington typewriter, so called? 776

A. The only thing that I can remember that was said on this subject is a remark which Mr. Fay once made to me, which was that the sign on the Chicago office read "Remington-Sholes Typewriters not Remington Standard." This remark impressed itself upon me, but the rest of the conversation I do not remember. 777

X-Q. 62. Do you recall any other conversation on this subject with Mr. Fay?

A. No, I do not.

X-Q. 63. Do you recall any conversation on the subject of taking care to distinguish between the two machines with Mr. Page during the time you were manager of the typewriter department in the office of Page, Dennis & Company?

A. No, I do not.

X-Q. 64. Do you recall any conversation on the same

778 subject with any other person or persons, and, if so, give their names and state the conversation?

The question is objected to as immaterial and irrelevant, in so far as it may call for conversations with parties in nowise connected with the litigation.

A. None that I can now recall.

X-Q. 65. Do you recall the fact that you did have conversations with others as regards taking care to distinguish between the Rem-Sho typewriter, so called, and the Remington typewriter, so called?

779 Same objection.

A. I think that I did have such conversations with the different salesmen who were engaged at various times to sell machines.

X-Q. 66. Now please state the names of the salesmen to whom you gave such instructions and state exactly or as nearly as you can what instructions you gave them on the subject of taking care to distinguish between the two machines.

A. The salesmen engaged at the office during my term of service were T. O. Parker, W. F. de Saussure,
780 Trenholm, Mr. Hatch, whose name, I think, is Hamlin E., a Mr. Hart, whose Christian name I do not recall, P. H. Diedrich, J. C. Cornell and J. G. Gurley. To all of these I explained the origin of the name Rem-Sho and told them that this explanation was to be given in response to any inquiries as to where the name came from. They were not directed further than this, except that it was understood that they were to avoid confusing our machine with the Remington Standard, where it appeared that such confusion seemed likely.

X-Q. 67. State by what names they reached or ob

tained the understanding as to avoiding confusion be- 781
tween the machines referred to in your last answer.

A. We would hold a meeting of the salesmen and in their presence I would proceed to sell a machine to an imaginary prospective customer, and in this proceeding I would outline the manner in which these salesmen should proceed when they were endeavoring to dispose of typewriters, and I usually said, in substance: "This machine (indicating the Rem-Sho, which was usually there for the purpose of illustration) combines the advantages of the Smith-Premier and the Remington Standard. It has the easy lift of the former and the 782
universal keyboard of the latter. It was invented by the son of the man who invented the Remington Standard typewriter and is being manufactured by the son of the man who started the manufacture of the Remington Standard machine. It is being manufactured in Chicago and has no connection with the Remington Standard typewriter, but possesses improvements which are not found on any one machine," etc.

X-Q. 68. In that connection or in giving your instructions to salesmen, what, if anything, did you say to them on the subject of taking care to distinguish between the Rem-Sho typewriter, so called, and the Rem- 783
ington typewriter, so called?

A. Nothing more than that the machines were entirely different, so far as business connections were concerned, and that in using the name Remington in their explanation of the machine and its merits that he was the son of the original Remington typewriter man, as was Mr. Sholes the son of the original typewriter inventor, and that the business interests of the two machines were separate and apart.

X-Q. 69. Then, if I understand your testimony, you gave your salesmen, in substance and in effect, the

784 instructions and caution imparted to you by Mr. Remington, as previously stated in your deposition in this case; is that correct?

A. I explained to the salesmen, in substance, just what I have stated, and I do not recall saying to them anything further on the subject.

X-Q. 70. During the time you were manager of the sales department at 341 Broadway, New York, did you have any correspondence with people on this question of the identity or difference between the two machines, that is to say, any inquiries by mail?

A. Not that I can now recall.

785 X-Q. 71. Have you ever read the twenty-fourth page of the Rem-Sho catalogue, that is to say, a catalogue such as is illustrated by "Complainant's Exhibit Rem-Sho Booklet"?

A. I have read in the Rem-Sho catalogue a statement similar to that referred to and which appears on page 24.

X-Q. 72. When was your attention first called to the statement contained on page 24 of "Complainant's Exhibit Rem-Sho Booklet"?

A. Very shortly after I entered the office of the
786 Rem-Sho Typewriter Company at No. 341 Broadway I observed the statement in the catalogue referred to when reading the catalogue through for my own enlightenment.

X-Q. 73. How soon was your attention called to this statement in the catalogue after you entered the service of the Remington-Sholes Typewriter Company, as hitherto stated by you?

A. I noticed it upon the first or second day that I entered the Rem-Sho office at No. 341 Broadway, during the time we were preparing the space in the Howe Scale Company's room for occupancy by the typewriter department.

X-Q. 74. Did you notice said statement in said catalogue before you received your instructions and caution from Mr. Franklin Remington, as stated in your testimony in this case? 787

A. I think about the same time. Mr. Remington arrived from Chicago upon the day I entered the service of the Remington-Sholes Company, and I read this account referred to in the catalogue within a day or so after I entered the office.

X-Q. 75. What did you understand this statement in the Rem-Sho catalogue to mean?

A. That the Remington-Sholes machine had been invented by Mr. Sholes, and that he and Mr. Remington were manufacturing it, using their combined names as a name for the machine, and that they were the sons of the two men who had originated the Remington Standard typewriter. 788

X-Q. 76. Was that all you understood this statement in the catalogue to mean, and, if not, what else did you understand it to mean?

A. It has been a long time since I read that account, and the only thing further that it contained and which I now remember was that the machine was not the same as the Remington Standard. 789

X-Q. 77. Did you not understand that in this statement there was a caution against confusing the so-called Rem-Sho typewriter with the Remington Standard typewriter?

A. My impression is that there was such a statement.

X-Q. 78. Did you call anybody's attention to this statement in the catalogue while you were manager of the typewriter department at No. 341 Broadway?

A. I gave the catalogues to the different salesmen

790 with instructions to read them, but did not invite their attention particularly to any one feature of it.

X-Q. 79. When was it that Mr. Franklin Remington stated to you that his father and Sholes' father were the inventors and manufacturers of the original Remington typewriter?

The question is objected to as misleading.

A. Mr. Remington told me that Mr. Sholes' father had invented and his father had originally undertaken the manufacture of the Remington Standard typewriter, and he told me this during the early part of his stay in
791 New York, during the opening of the New York office at No. 341 Broadway. He probably said this to me during the first week or so he was here.

X-Q. 80. In answer to X-Q. 55 you said that Remington said, "that I should explain to inquirers that the Remington-Sholes typewriter was not the Remington Standard typewriter;" will you please state why, as you understand, Mr. Remington made that statement to you at the time mentioned?

A. Upon Mr. Remington's arrival here he and I went out together to sell a machine and I listened to his statements concerning it to the prospective customer,
792 and when the customer inquired what relation existed between our machine and the Remington Standard Mr. Remington explained just what I have heretofore stated about the relationship of the two typewriters, and on leaving this office he told me that that explanation should be given in response to such inquiries. This is my recollection on the subject.

X-Q. 81. Why, according to your understanding, did Mr. Remington make that explanation to the prospective buyer?

A. The explanation was made, as I have stated, in response to the buyer's inquiry on the subject.

X-Q. 82. Why do you understand the buyer or prospective purchaser made that inquiry of Mr. Remington in your presence? 793

A. I cannot account for his reason for making the inquiry any further than he inferred from the fact that I brought Mr. Remington with me that perhaps he was in some way connected or interested in the typewriter bearing his name, but he said nothing from which I could draw a more positive inference.

X-Q. 83. Which typewriter, according to your understanding, did he mean as bearing his name?

The question is objected to as indefinite and misleading, and for the further reason that it calls for mental impressions of a third party and not for facts within the knowledge of the witness. 794

A. This occurrence took place nearly two years ago, and while I remember distinctly the explanation Mr. Remington made and what transpired at the place where we went to make the sale, I cannot now recall in what way the prospective purchaser connected Mr. Remington's name with the typewriter discussion. I simply remember that he made some inquiry about Mr. Remington's name and the typewriter we were endeavoring to sell, and that Mr. Remington made the explanation heretofore recited. 795

X-Q. 84. What machine did you refer to when, in your answer to X-Q. 82, you said "he inferred from the fact that I brought Mr. Remington with me that perhaps he was in some way connected in the typewriter bearing his name"?

A. In answering that question I referred to the Remington Standard typewriter.

X-Q. 85. Where was the place and who was the prospective buyer with whom you and Mr. Remington had this interview, to which you have previously referred?

796 A. It was in the Bowling Green Building. The name of the prospective customer I do not recall.

X-Q. 86. Was such customer at that time using a typewriting machine or did he or she own one, to your knowledge, and, if so, what machine?

A. My impression is that in that office they were then renting a Smith-Premier typewriter.

X-Q. 87. Did you, while you were manager of the typewriter department at 341 Broadway, have inquiries made of you at any time concerning the connection between the Rem-Sho machine, so called, and the Remington Standard typewriter by prospective customers or
797 other persons?

A. I think that question was asked me at different times, but I do not now recall any particular instance at which it was made or any particular person who made it.

X-Q. 88. Do you recall the fact that the persons making the inquiry were prospective buyers or persons who were examining the Rem-Sho typewriter, so called, with a view to purchase?

A. No, I do not.

X Q. 89. How long have you been acquainted with
798 the so-called Remington typewriter?

A. Fifteen years or more.

X-Q. 90. Is that a machine which has been largely in use and upon the market during the fifteen years that you have been acquainted with it?

A. Certainly.

X-Q. 91. Is not the so-called Remington machine and has it not been during the time you have known anything about it the best known and most largely used of any typewriter upon the market?

A. It has.

X-Q. 92. Speaking from your knowledge and ex-

perience, do you consider the name Remington, when 799
associated with typewriter machines, as a valuable trade-name?

The question is objected to as immaterial and irrelevant and not proper cross-examination.

A. I do.

X-Q. 93. Do you consider it a valuable trade-name in its association with the Remington-Sholes machine?

Same objection.

A. Yes, I think so.

X-Q. 94. Do you remember whether, during the time you were manager of the typewriter departm nt of 800
the Remington-Sholes Company at 341 Broadway, any one came to your place of business supposing it was where the Remington typewriter was sold?

A. I do.

X-Q. 95. On how many occasions?

A. I recall but one.

X-Q. 96. During the time you were manager of the typewriter department at 341 Broadway, did you or not ever receive any mail or other matter that was apparently intended for the Remington people or Wyckoff, Seamans & Benedict, who carried on business on the 801
block below you on the same street?

Objected to as not proper cross-examination.

A. No, I did not.

X-Q. 97. Did you sometimes receive letters or mail matter or other matter addressed to the Remington Company or Remington Typewriter Company?

Same objection.

A. No, sir, I did not.

X-Q. 98. Did any of your salesmen report that customers, or those who were solicited to become such, inquired as to the identity of the parties manufacturing

802 or handling the Rem-Sho typewriter and the Remington machine were in any way connected or associated together?

Same objection.

A. Not that I remember.

X-Q. 99. Will you please state what, if anything, Mr. Page told you as to what Mr. Seamans said to him concerning the use of the name Remington by the Remington-Sholes Typewriter Company or its sales agents?

Same objection.

803 A. My impression is that Mr. Page told me that Mr. Seamans had said to him that he, Mr. Seamans, intended instituting proceedings to prevent the continued use of the name Remington in connection with the manufacture and sale of the Remington-Sholes typewriter, or this in substance.

X-Q. 100. Please state as nearly as you can when Mr. Page so informed you.

Same objection.

A. It must have been five or six months after the office opened, as near as I can recall it.

X-Q. 101. How came you to leave the employ of
804 the Remington-Sholes Company?

A. I object to answering that question.

Counsel for defendant requests the witness to answer the question.

A. Under the terms of my contract with the Remington-Sholes people my term of service ended at the time I left them.

X-Q. 102. Is that all the reason why you left the service of the Remington-Sholes Company, the expiration of your term?

A. I think that the Remington-Sholes Company were not satisfied with the amount of business that was

being done in the New York office and consequently the 805
term of my contract was allowed to end my service with them.

X-Q. 103. During the time you were in charge of the typewriter department at 341 Broadway, New York, did the department of which you had charge sell quite a number of so-called Rem-Sho typewriters?

The question is objected to as immaterial, irrelevant and not proper cross-examination.

A. It did.

X-Q. 104. Do you recall any instances where such machines were sold that displaced Remington type- 806
writers?

A. I cannot now recall any particular instance, although I know that this was done.

X-Q. 105. And done by the office of which you were general manager?

A. Yes.

*Re-Direct Examination by Mr. Fisher.*

R-D. Q. 106. You have stated in your cross-examination that upon the windows of the store of Page, Dennis & Company there appeared a sign reading "Remington-Sholes Typewriters." Please state what else, if any- 807
thing, appeared upon such windows and in what relation such additional matter, if any, was with respect to the sign "Remington-Sholes Typewriters."

A. Upon both windows in large letters commencing at the top there was the words "The Howe Scales." Under that in smaller letters and to one side appeared the following: "Page, Dennis & Co." And in letters about the same size as those in which the latter name appeared, the words "Remington-Sholes Typewriters." This is as accurately as I can give it from recollection.

R-D. Q. 107. State as nearly as you can from recol-

808 lection the relative size of the letters used in the words "The Howe Scales" and in the words "Remington-Sholes Typewriters" as such words appeared upon the windows of Page, Dennis & Company.

A. The letters in the sign "The Howe Scales" were, I should estimate, about a foot in height, while those composing the sign "Remington-Sholes Typewriters" were from two and a half to three inches or perhaps three and a half inches in height.

R-D. Q. 108. In your answer to X-Q. 67 you have used the expression "this machine (indicating the Rem-Sho which was usually there for the purpose of illustra-
809 tion) combines the advantages of the Smith Premier and the Remington Standard." Please state during how much of the time of your service as manager of the Remington-Sholes Company, at 341 Broadway, New York, there was a Rem-Sho machine present.

A. There was always one or more machines in the office. What I meant by saying that the Rem-Sho machine was usually present for the purpose of illustration was that it was generally the case that a machine was placed before the salesman to whom instructions were being given.

810 R-D. Q. 109. In X-Q. 94 you were asked whether you remembered any one coming to the typewriter department of the Remington-Sholes Company at 341 Broadway, supposing it was where the Remington typewriter was sold,-and to this question you answered affirmatively. Please state the circumstances of the party coming to the office of the Remington-Sholes Company, as indicated in X-Q. 94, if you recall them.

A. I remember very distinctly that on one occasion a man came up to the typewriter department and asked me whether that was the Remington Standard typewriter which I had there (indicating one of the Rem-

ington-Sholes machines, which was upon a table near by). I told him no, that it was the Remington-Sholes typewriter. That the Remington Standard typewriter office was on the block below, whereupon he left the office and did not return, although I offered to show him one of the machines I had for sale. 811

R-D. Q. 110. In your answer to X-Q 83 you have stated, when referring to an interview with a prospective customer at which both you and Mr. Remington were present, that "this occurrence took place nearly two years ago." I ask you to state how soon this occurrence took place with respect to the time when you opened the office of the Remington-Sholes Company at 341 Broadway, New York? 812

A. It took place upon the day that Mr. Remington reached New York, which was before the office was opened at No. 341 Broadway, so that it was nearly three years ago instead of about two years, as previously stated.

R-D. Q. 111. When we adjourned yesterday afternoon you promised to examine a diary for the purpose of ascertaining more exactly the date when the New York office of the Remington-Sholes Company was opened. Have you examined such diary? 813

A. I made an effort to find the diary for 1897, but found that it had been left, with some of my other possessions, in the country where I was residing while with the Remington-Sholes Company, but my diary for 1898 shows that I left the Remington-Sholes Company in October, 1898, and as I entered their service just about one year previously, I am quite sure that I went to that company in October or November of 1897.

R-D. Q. 112. State, if you know, what is the practice of typewriter dealers and manufacturers with respect to taking the machines of other manufacturers in

814 exchange when making sales of their own machines.

Complainant's counsel objects to the question as immaterial and irrelevant and as incompetent.

A. It is a universal custom among typewriter manufacturers to accept in partial payment for one of their own machines a machine of another make.

R-D. Q. 113. And how long, to your knowledge, has such been the universal custom?

Same objection.

A. Ever since I have known anything about the typewriter business, which has been about six or seven years.

815 W. DE S. TRENHOLM.

THOMAS O. PARKER, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. Please state your name, age, residence and occupation.

A. Thomas O. Parker; thirty-five; 312 West 23rd street, New York City; occupation, clerk for Wheel-
816 wright, Eldridge & Company, 61 and 63 Worth street, New York City.

Q. 2. Were you ever employed to sell Rem-Sho typewriters, and if so, state when, where and by whom?

A. I was, from about the 1st of January, 1898, to some time in September of the same year, at the office of Page, Dennis & Company or the Howe Scale Company, 341 Broadway, New York. I was employed by Mr. Trenholm, the local manager for the Remington-Sholes Company of Chicago.

Q. 3. What was the nature of your duties while you were employed as salesman for the Rem-Sho type-

writer? I mean were the duties performed in the office 817
or outside?

A. For a few months I was employed entirely outside, and my duties were to canvass for the machine, and later on I was employed in the office; then I took charge of the office work and also sold machines.

Q. 4. What were your duties during the month of June, 1898?

A. I think it was about the 1st of June that I was taken from the outside work and put in the office. I would not be sure as to the date, but I know it was some time about the 1st of June.

818

Q. 5. State what signs, if any, were exposed in the office of Page, Dennis & Company relating to typewriting machines during the time that you were there engaged in selling typewriters.

A. There was a large cloth sign of dark red material on which was printed in large gilt letters the name of the machine and also of the company manufacturing the said machine.

Q. 6. Where was such sign exhibited with relation to that part of the office occupied for the typewriter business?

A. It was on the wall about six or seven feet from 819
the floor and directly in front of anyone entering the office of the typewriter department.

Q. 7. I call your attention to the sign marked "Defendant's Exhibit Rem-Sho Sign from Office of Page, Dennis & Company," and ask you to state whether you have ever seen such sign before, and if so, when and where.

A. That appears to me to be the identical sign which was in our office.

Q. 8. How long was that sign exhibited above that part of the office or store of Page, Dennis & Company

820 devoted to the sale of typewriters? I mean how long to your knowledge.

A. It was there when I first entered their employ and it was there when I left, to the best of my recollection.

Q. 9. What other signs, if any, relating to typewriting machines do you recall as having been exhibited in or about the store of Page, Dennis & Company during the time that you were engaged in the sale of Rem-Sho typewriters?

A. We had a small white cardboard sign in the win-
821 dow. I should judge it was about sixteen inches by twenty-four, and also a sign in silver letters across the window itself.

Q. 10. State, if you recall, how the sign on the windows was worded. I mean the sign relating to typewriters.

A. I don't remember exactly the wording, but I know that the name Remington-Sholes appeared in it.

Q. 11. I call your attention to "Defendant's Exhibit Rem-Sho Pasteboard Sign" and ask you to state whether you have ever seen signs like this before, and if so, when and where.

822 A. The cardboard sign that we had in the window was somewhat similar to that, but I do not think it was that exact sign.

Q. 12. State what you recall as having been upon the cardboard sign in the window.

A. I think it was about as follows: "The New Rem-Sho Typewriter, Models Nos. 2 and 3. Manufactured by the Remington-Sholes Company, Chicago." There may have been other wording, but I don't recall it.

Q. 13. I call your attention to "Complainant's Exhibit Rem-Sho Catalogue" and ask you to state whether

you have ever seen catalogues like this before, and if so, when and where. 823

A. I have, at the office of Page, Dennis & Company during the year 1898.

Q. 14. Where were such catalogues exhibited in the office of Page, Dennis & Company, and for what purpose were they used?

A. They were kept on a table in the typewriter department and were used to distribute to prospective customers and people who called in to make inquiries concerning the machine.

Q. 15. State in what respect, if any, the catalogues referred to in your last answer differed from the "Complainant's Exhibit Rem-Sho Catalogue" before you. 824

A. There was no difference whatever. It is the same catalogue.

Q. 16. How long were these catalogues used in the typewriting department of the store of Page, Dennis & Company during the time that you were in their employ?

A. They were there all the time that I was there.

Q. 17. Were any typewriting machines exhibited in the store of Page, Dennis & Company during the time that you were employed there? 825

A. Yes.

Q. 18. What kind of machines were these?

A. Nos. 2 and 3 Rem-Sho.

Q. 19. During what part of the time of your employment were these Rem-Sho machines exhibited at the store of Page, Dennis & Company?

A. During the whole term of my employment.

Q. 20. Do you recall or are you able to state how the Rem-Sho typewriters were marked during the time that you were engaged in selling such typewriters?

A. They were marked with the name of the Rem-

826 ington-Sholes Company, and I believe during the latter part of my engagement I saw one or two with the name Rem-Sho on the paper table.

Q. 21. Do you recall whether there was any address marked upon the typewriters?

A. Chicago appeared directly after the company's name.

Q. 22. I call your attention to "Defendant's Exhibit Remington-Sholes Company Name-Plate," and ask you to state whether you have ever seen name-plates bearing this inscription upon typewriting machines, and if so, when and where.

827 A. I am not sure about the word "Mfrs.," but the balance of the inscription appeared on the machines sold in our office.

Q. 23. Was there ever displayed in the office of Page, Dennis & Company, or of the Remington-Sholes Company, at 341 Broadway, any sign reading "Remington Typewriter Company"? I mean did you ever see such a sign at such place?

A. I never did. Every sign displayed in the place and all advertising matter connected with the business had the words Remington-Sholes Company on it.

828 Q. 24. Did you ever receive from any officer or manager of the Remington-Sholes Company or from any officer of the Howe Scale Company any oral directions or instructions in regard to any explanation to be made in answer to inquiries respecting the name of the Rem-Sho machine or respecting the name of the Remington-Sholes Company?

A. Only in this regard, that we were instructed in case inquiries were made regarding any possible connection with the Remington Company that we were to say that there was no connection whatever between the two companies.

Q. 25. By whom were such instructions given you? 829

A. By Mr. Franklin Remington and Mr. Trenholm. Words to this effect appear right in their catalogue.

Q. 26. I call your attention to a paper marked "Defendant's Exhibit Weingart Sale Slip," and ask you to state, if you know, in whose handwriting the manuscript portion of this paper is written and what such paper is and what you know in regard to it.

A. It is in my own handwriting. It was a form which we used in the typewriter department instructing Page, Dennis & Company to ship a No. 2 machine to Mr. S. Weingart, Grand Hotel Station, Ulster County, New York. This form was filled out immediately after 830 the order was given by Mr. Weingart. I should have said that this was a form used by the typewriter department instructing Page, Dennis & Company to ship machines whenever they were sold and to whom sold. This particular form was used instructing them to ship a machine to Mr. Weingart as stated.

Q. 27. State what, if anything, you know in regard to the sale to Mr. S. Weingart of a typewriting machine as indicated in said form referred to in your last answer.

A. Mr. Weingart came into the office and stated 831 that he wished to purchase a machine. I showed him one of the machines that was on exhibition and entered thoroughly into the details of it. After some little conversation he stated that he would call later and let me know whether or not he would take one. A day or two after that he came in and placed the order on which the form referred to in my previous answer was filled out.

Q. 28. What machine did you explain to Mr. Weingart at the time referred to in your last answer?

A. I showed him both the No. 2 and No. 3 Rem-Sho machine.

832 Q. 29. And were these the machines that you explained to him?

A. They were.

Q. 30. Did you explain these Rem-Sho machines to Mr. Weingart before or after the sale was made to him?

A. Before the sale was made. He left directly after the sale and I have never seen him since.

Q. 31. At what date was this form or slip marked "Defendant's Exhibit Weingart Sale Slip" made out by you?

A. June 29th, 1898.

833 Q. 32. And how long was it after your conversation with Mr. Weingart before this form or slip was filled out by you?

A. I can't say positively, but I judge it must have been within a short time after he left the office, as we were very prompt in instructing Page, Dennis & Company as to sales and shipments.

Q. 33. What does the expression "Commission to Hatch, $6.50" mean, as the same appears on the Weingart sale slip before you, and why was it put there by you?

834 A. It was always customary with us that when any one called in to ask about the machine and it appeared that it was possible to sell them a machine, to send a salesman immediately to call upon him and try to interest him. In this instance, after Mr. Weingart's first visit, I told Mr. Hatch and requested him to call upon him at his New York address. When this was done we considered that the sale passed over to the interest of that salesman, and that when the sale was made, whether directly by the salesman or by the office, that the salesman was entitled to the commission. This note on the foot of the form was for the purpose of having Page, Dennis & Company and the Remington-Sholes Company credit Mr. Hatch for $6.50 on this sale.

Q. 34. How many times did you talk with Mr. Weingart in regard to typewriting machines at the office of Page, Dennis & Company before the sale was effected? 835

A. Twice. It was on the occasion of his second visit that he gave the order.

Q. 35. Do you recall having consulted with any one in regard to the price to be made to Mr. Weingart before the Rem-Sho machine was sold to him?

A. I am not sure, but I think I spoke with Hatch about it.

Q. 36. What other salesmen, if any, were in the office or store at the time that Mr. Weingart called; I mean what other typewriter salesmen? 836

A. I don't remember.

Q. 37. Did Mr. Weingart talk with any other typewriter salesman than yourself on the occasion of his visits to the store of Page, Dennis & Company; I mean on the occasion of his two visits at which he talked with you?

A. No; he did not.

Q. 38. Did you ever have occasion to quote to any other party coming into the store of Page, Dennis & Company the disconnt allowed to a principal of a school or a school teacher? 837

A. No; not that I can recall.

Q. 39. Did you ever sell to any principal of a school or a schol teacher, or a party representing himself as such, any Rem-Sho typewriter, where such party came into the store of Page, Dennis & Company and purchased a typewriter?

A. No; I never did, to any other except Mr. Weingart.

Q. 40. Did you ever sell a typewriting machine to any party, except Mr. Weingart, who requested the ma-

838 chine to be shipped to Grand Hotel Station, Ulster County, New York?

A. No.

Q. 41. During either of the visits that Mr. Weingart made to the store of Page, Dennis & Company, did he ask you "how much a Remington typewriter was"?

A. No. He asked me if we had a Remington machine. I told him no, but that we had a better machine, one which combined the best qualities of the Remington with those of the Smith Premier, and I went to work to explain to him the difference between this machine and the Remington.

839 Q. 42. In what way did you explain to him the difference?

A. I told him that in the Rem-Sho machine the shifting from the small letters to the capitals was done by a shifting of the basket, while in the Remington the carriage was shifted; as the basket of the machine is much lighter than the carriage, the wear and tear on the machine was not as great in the Rem-Sho as in the Remington, and that there was not as much force required by the operator, and that another difference was that in order to see the writing, you did not have to raise the

840 whole carriage as in the Remington, but simply turn the platen as in the Smith Premier. I also told him about the interchangeable carriages, showing how one machine could be operated with either a short or long carriage, whereas in other makes of machine, such as the Remington, the long and short carriage machines were separate.

Q. 43. Did you tell Mr. Weingart that the Remington typewriter was sold there?

A. I did not; in fact, I told him just the opposite.

Q. 44. Did you tell Mr. Weingart by whom the Rem-Sho machine was made, or did you give him any cata-

logue or advertising matter showing the name of the Remington-Sholes Company? 841

A. I am not absolutely positive in regard to this, but as it was customary for me to do these things to every one who inquired about the machine, I presume that I did so.

Q. 45. Do you recall whether or not you told Mr. Weingart where or by whom the Remington Standard machine was being sold?

A. I don't recall that, but I know I told lots of people who came there inquiring about the Remington machine and where it was sold just where their office was.

Q. 46. Was the machine that was exhibited to Mr. Weingart before the sale was made to him, or was the machine that was sold to him represented as a Remington machine or as a machine manufactured by the people who manufactured the Remington machine? 842

A. No; it was not.

Defendant's counsel offers in evidence a copy of the original invoice from Page, Dennis & Company to S. Weingart for one No. 2 Rem-Sho Typewriter No. 2,792, $65, and the same is marked "Defendant's Exhibit Weingart Invoice."

It is stipulated by counsel for complainant that this duplicate invoice may be used with the same force and effect as the original might have been if duly proven. 843

*Cross-Examination by Mr. Donnelly.*

X-Q. 47. What was your business immediately prior to the time when you entered the service of the Remington-Sholes Company at 341 Broadway, New York City?

A. I was a typewriter.

X-Q. 48. With what company, if any?

844 A. With W. B. Moses & Sons, at Washington, D. C.

X-Q. 49. About how long were you with W. B. Moses & Sons, Washington, D. C., and what typewriter, if any, did they manufacture or sell?

A. I was with them about eighteen months and used a Remington machine and a Peerless. They did not sell machines at all. It was a furniture house.

X-Q. 50. How came you to be employed to sell Rem-Sho tyewriters for the agency at 341 Broadway, this city?

A. I was offered the position and urged to accept it by Mr. Trenholm, the manager of the New York office.

845 X-Q. 51. While employed for a few months as an outside canvasser for the Rem-Sho machine what territory did you cover?

A. I worked from Wall street on the south to Ann, I think it was, on the north, and from Broadway to the East River for a part of the time, and later all of the city south of Ann street and east of Broadway. I find I was mistaken. I should have said that at first it was from Wall to Ann, and later south of Wall.

X-Q. 52. Did you succeed in selling any Remington-Sholes machines or Rem-Sho machines while engaged in canvassing this portion of the city?

846 A. Yes; I sold a few.

X-Q. 53. Were any of these sales referred to in offices or places where other machines were in use at the time of your sales?

A. Yes.

X-Q. 54. Did you take such other machines in exchange for your machines?

A. We took such other machines in part payment, allowing for the same prices according to an exchange list.

X-Q. 55. About how many Remington machines did you take in this manner?

A. I don't know that I took any Remington ma- 847
chines while I was canvassing.

X-Q. 56. About how many of all other makes of machines did you take in exchange during this period?

A. That I can't recall. I can only positively remember two machines which I took back from a place on William street, and I don't remember now the make, but they were visible writing machines.

X-Q. 57. About how many machines of the Rem-Sho make could you say that you sold altogether while engaged in said outside canvassing?

Defendant's counsel objects to the question as 848
immaterial and irrelevant and as not proper cross-examination, no foundation whatever existing in the witness' direct examination for an inquiry into the extent of the business done by the Remington-Sholes Company.

A. I don't know, but not over six or seven.

X-Q. 58. While you were subsequently engaged in office work at the store of Page, Dennis & Company, about how many Remington machines were taken in exchange for Rem-Sho or Remington-Sholes typewriters?

A. I can't recall, but we usually had three or four on hand pretty much all the time. At the end of each 849
month, or the first of each month, I am not sure which, we sent all machines which had been taken in exchange to a typewriter exchange on Fulton street, kept by a man named Miner.

X-Q. 59. About how many on an average were thus sent to Miner every month?

A. I don't remember, but I judge about three or four or five.

X-Q. 60. This continued during the entire term of your employment?

A. No. For a short while, I can't say quite how

850 long, we did not send them to Miner. Our agreement with him was annulled. I am not sure what was done with them then, but my impression is that they were held for disposition by the home office, that is, the home office of the Remington-Sholes Company.

X-Q. 61. About what proportion of these exchange or second-hand machines were Remington machines?

A. I can't recall that, but I don't think we had more than six or eight during the whole term of my service.

X-Q. 62. What were your main duties at the office of the sales department of the Rem-Sho typewriter at Page, Dennis & Company's store?

851 A. I attended to the correspondence, except when Mr. Trenholm was present. I entertained customers who came in, made out forms for the shipment of machines, kept what we called the machine register, I think; however, it was a report to the factory which was filled out day by day, and sent at the end of each month. I made an occasional trip away from the city to show machines to parties who had become interested in them through advertisement or otherwise.

X-Q. 63. Did you always obey the instructions that were given you by Mr. Franklin Remington and Mr.

852 Trenholm in regard to distinguishing your machine from that of the Remington machine?

A. I always did. I never sold a machine, nor did I ever place one on trial with any one without explaining the difference between the Rem-Sho machine and the Remington Standard. I mean by this that I explained to them that the machines were entirely different in every way, both as to construction and manufacture, that they were made by different companies. I don't think I ever sold a machine to a party to whom I did not state that the manager of our company, Mr. Franklin Remington, was the son of the man who first manu-

factured the old Remington machine, and that our Mr. 853
Sholes was the son of the inventor of the old Remington machine, and add that they were entirely different companies, and I would usually wind up in a joking way by saying, "You see it is a case of father against son."

X-Q. 64. Did you always volunteer this information or was it given in answer to or explanation of inquiries made by the purchaser or prospective purchaser?

A. Sometimes I volunteered it and sometimes it came out in the course of conversation. I always was particular about the point of its not being a Remington machine, and when I did not volunteer the information 854
the question naturally was asked me then about the manufacture of the machine.

X-Q. 65. That is, as to whether the Remington machine and the Rem-Sho machine were made by the same parties?

A. Yes.

X-Q. 66. You have stated in substance that during your employment at the office of Page, Dennis & Company you sent lots of people who wanted the Remington office or the store of Wyckoff, Seamans & Benedict, but had called at your place instead, down to the Remington office or salesroom of Wyckoff, Seamans & Bene- 855
dict, and I now ask you whether you ever succeeded in selling any such persons a Rem-Sho typewriter or endeavored to sell one to any of such persons?

A. I endeavored to sell every man that came in there inquiring for typewriters irrespective of make. I never, however, withheld the address of any other typewriter company from any one who inquired for it, and I don't recall having sold any one save Mr. Weingart who came in and seemed to have an intention of buying a Remington machine, and in his case upon his second visit, when he gave me the order for the Rem-Sho, I

856 judged that he had seen the other makes of machines between that occasion and that of his first visit. In my reference to Mr. Weingart, when I said that he seemed to have an intention of buying a Remington machine, I meant that he inquired for the Remington, as stated in my direct examination, and not that he bought the Rem-Sho, thinking that it was a Remington. When I said that I endeavored to sell every man that came in there inquiring for typewriters irrespective of make, I intended to convey the idea that the inquirers for Remington Standard machines were included in this number, but I did not make any misrepresentations to them
857 in regard to the manufacturers, nor anything else. Not only that, I did not allow them to get under a false impression in regard to the makers of the Rem-Sho machine.

X-Q. 67. And when you did not succeed in your endeavors to sell Rem-Sho machines to inquirers for the Remington machine you sent them down to the Remington store or told them where they could buy a Remington make?

A. I don't think I said that I sent all parties who inquired about Remington machines to the Remington
858 office. I think I said parties who inquired for the Remington office. Whenever it was asked me where a Remington could be bought I gave the desired information, that is, I told them where the Remington office was located.

X-Q. 68. But, as you have before stated, you tried to sell such parties a Rem-Sho machine; is that right?

A. Yes; I tried to sell anybody who came in a Rem-Sho machine. If I could not sell these parties I would not withhold from them any information in regards to the Remington or the location of the Remington office.

X-Q. 69. In view of the number and character of

the signs in and about the windows of the store of Page, Dennis & Company, did it occur to you, or does it now occur to you, it was natural that some parties should come in your store and inquire for a Remington machine or if that was the Remington office? 859

A. I don't think it was at all natural for anyone who was the least observing, for the simple fact that the name Sholes was very prominent, and what made it still more prominent was that there was a hyphen between the names Remington and Sholes. In addition to that the sign had "Rem-Sho" on it.

X-Q. 70. Still there were several signs in and about said windows bearing the name Remington, were there not? 860

A. Not according to my understanding of the reading of the signs. The signs contained the compound word Remington-Sholes and not the simple name Remington.

X-Q. 71. Now please answer the last preceding question yes or no, if you can.

A. I will have to answer no to the last preceding question.

X-Q. 72. Then you do not regard that any of the signs referred to bore or contained the word or name Remington? 861

A. Only as a part of a compound word.

X-Q. 73. And because of the presence of a hyphen between the names Remington and Sholes you would say now that there was no name Remington on any of the signs inquired about; am I right?

Defendant's counsel objects to the question as immaterial and irrelevant, and like objection is made without repetition to all similar questions, since it is of no moment what the opinions of the witness may be upon the subject, and he has al-

862 ready repeatedly stated what matter appeared upon the signs.

A. Yes.

X-Q. 74. If the sign had read "Remington, Sholes & Co." would you then say also that there was no name Remington on that sign?

A. No.

X-Q. 75. Then you would admit the name Remington in the sign last inquired about?

A. Yes, but I would not admit that it was natural for an observing person to mistake that for the Remington Company.

863 X-Q. 76. Of course being familiar with the typewriter trade *you* would not mistake such a sign or a sign reading Remington-Sholes Company as a sign intended for or as the place of business of the party selling the well-known Remington machine?

The question is objected to as immaterial, irrelevant and not proper cross-examination.

A. I am quite sure that I would not in that instance or any other instance.

X-Q. 77. But you cannot say, can you, that one not familiar with the typewriter trade when seeing the
864 name Remington on the various signs referred to would not or might not mistake your place of business for that of the place of business at which the Remington typewriter was sold?

Same objection.

A. I cannot say what a man who was not careful or observant might do, but I don't think that I would ever mistake the firm name Remington-Sholes Company for the Remington Company no more than I would mistake Pope Manufacturing Company for C. H. Pope & Company.

X-Q. 78. Suppose you saw one sign The Higgins Soap Company and another sign Charles H. Higgins Soap Manufacturing Company and you wanted to buy the original Higgins soap, which concern would you select as being the maker of the original article? 865

Same objection.

A. I think if I was in a boom town where the integrity of the business man was not known that in that instance I would go to some disinterested party and inquire which of these two firms was the manufacturer of the orginal article.

X-Q. 79. Then there would be nothing in the signs themselves to guide you, since the name of Higgins appeared in both, and since it also appeared that they were both engaged in the soap business? 866

Same objection.

A. No.

X-Q. 80. Then even an observant person like yourself, but not familiar with the signs or businesses or various competing companies, might not be able to tell from the signs themselves which of several places bearing signs having similar words or names is the particular place that he is in search of? 867

Same objection.

A. That depends. If the person was looking for the Charles H. Higgins Soap Manufacturing Company and he went to the other place there would be no excuse; if he was looking for the soap he would be excusable in going into either place if he couldn't get the information as to which of these parties manufactured that soap. In other words, I don't mean to say that a party looking for a Remington typewriter might not go into a Remington-Sholes office, but if he was at all observant and he was looking for the Remington Company there

868 was nothing whatever on the signs displayed by the Remington-Sholes Company to lead him astray.

X-Q. 81. Well, let us suppose he was not looking for a sign reading Remington Company—in fact he knew nothing of the character of the signs employed by the vendors of the Remington machine—but that he was in search of a Remington machine and upon passing 341 Broadway he saw a sign bearing the name Remington and typewriting machines in the window of that store. Would such a person be justified or not in going into that store in the belief that that was the place where the Remington machine was on sale?

869 Same objection.

A. As stated before, it is possible, but I don't think I would do it. No, I don't think he would be justified in it as an observant man.

X-Q. 82. Why?

Same objection.

A. Because the names of the two companies are entirely different and New York not being a boom town he could easily get the information he desired.

X-Q. 83. My question supposes that the party referred to is to get his information solely from the signs 870 and the nature of the business. Now will you please answer my second preceding question with that understanding of it?

Same objection.

A. You have stated that I am to give you my opinion only in this matter, and my opinion is that an observant man would not be justified in mistaking the places.

Adjourned to Wednesday, June 6th, 1900, at 9:30 A. M.

871 New York, June 6th, 1900, 9:30 A. M. Met pursuant to adjournment. Present, counsel as before.

Cross-examination of Mr. Parker resumed:

X-Q. 84. Is your answer to cross-question 82 the best answer that you can make to the question?

Same objection.

A. I think that my answer, or that portion of my answer which says "Because the names of the two companies are entirely different," is the best answer I could make.

872

X-Q. 85. How is it, then, in answer to X-Q. 80 you stated that if the party was looking for the soap and not for the name he would be excusable in going into either place, while you say now that if he were looking for a typewriter and not for the name he would not be justified in going into either place?

Same objection.

A. Because in the case of the soap only the proper name Higgins was used, whereas in the case of the typewriter Sholes is used as a part of the compound word Remington-Sholes, and a man might easily be undecided as to whether the original Higgins soap was made by the Charles H. Higgins Soap Manufacturing Company or the Higgins Soap Company, whereas in the case of the typewriter it is entirely different and the two cases are not parallel.

873

X-Q. 86. Now please explain the difference in the case of the typewriter.

Same objection.

A. In the case of the typewriter the name of one company is simply the Remington Typewriter Company; the name of the other company is the Remington-

874 Sholes Company, the name Sholes being used in conjunction with the name Remington, the two together forming an entirely different name and one which I fail to see an observant man could mistake for the other.

X-Q. 87. Now, supposing that the name of the concern selling the Remington typewriter were the Charles H. Higgins Company, then would a person be justified in going into the store of the Remington-Sholes Company for a Remington typewriter?

Same objection.

A. If there was no typewriter company bearing the
875 name Remington alone, and the Remington-Sholes Company was the only company in which the word Remington appeared, then I think that a man would be justified in inquiring of the Remington-Sholes Company if they sold a Remington machine.

X-Q. 88. Have you read Mr. Weingart's testimony given in this case?

A. Not all of it. I read portions where he stated that he was under the impression that he was buying a Remington machine, and what he had to say in reference to signs and advertising matter, probably about half a page; I don't recall just exactly how much. The testi-
876 mony was shown to me by Mr. Fisher, defendant's attorney, in the office of Page, Dennis & Company, 341 Broadway, in the afternoon of June 4th, 1900.

X-Q. 89. Do you recall distinctly the appearance of Mr. Weingart?

A. I recall about what he looked like. As I remember, he was a man about five feet eight or nine inches tall, rather thick set, weighing, I should judge, about 160 or 170 pounds. He wore a heavy dark moustache and spoke with a slight accent. That is about as much as I remember his description.

X-Q. 90. That is all you recall about the appearance or description of the man? 877

A. That is about all.

X-Q. 91. Can you recall any further or additional conversation than that which you have related which occurred at the times of Mr. Weingart's visit to your store?

A. What I said in my direct examination covers about all that I recall at the present time.

X-Q. 92. Will you please repeat it briefly again?

A. It was to about this effect: He came up to the typewriter department and asked if we sold Remington machines. I told him no, but that we had a better machine, according to my judgment. I invited him into the office. (When he first addressed me he was standing on the outside of a railing which divided the typewriter department from the rest of the store.) He came into the office and we discussed the machine pretty thoroughly, and I explained to him all of the points of the Rem-Sho and after quite a little talk he said he would let me know later, which he did a day or two afterwards, when he came in and placed the order. 878

X-Q. 93. You think that is the exact language of your reply to Mr. Weingart's inquiry as to whether you sold Remington machines when you use the words now "No, but that we had a better machine"? 879

A. That may not have been the answer verbatim, but it certainly was to that effect, and so positive that he could not possibly have been misled.

X-Q. 94. Have you not answered inquiries of this nature to the effect that "we sell Remington-Sholes machines"?

A. I don't think that I ever answered a direct question in any other way than the manner in which I answered Mr. Weingart. Of course, I mean a question

880 with regard to whether or not we sold Remington machines.

X-Q. 95. Do you now say positively that you did not answer Mr. Weingart's question by stating in substance that "we sell Remington-Sholes machines"?

A. I say positively that in my answer to Mr. Weingart I told him that we did not sell Remington machines. Of course, when I said that we sold a better machine, I told him what the name of that machine was.

X-Q. 96. How do you know that Mr. Weingart could not possibly have been misled, as stated by you in answer to X-Q. 93?

881 A. Because I told him positively that we did not sell the Remington machines, that we sold another machine. I showed him this other machine and told him what were the differences between the Remington machine and the Rem-Sho machine, which latter I sold him on his second trip.

X-Q. 97. Do you recollect with equal clearness the details of all conversations you had with prospective buyers in the office of Page, Dennis & Company while you were there employed in the typewriter department?

A. Not all cases, but two or three of them I do. This one was particularly impressed upon my memory, 882 because of two or three points, namely, it was the only machine that I sold which was shipped to that point; secondly, a special price was made for it; and, thirdly, I remembered the particular pains I took to explain this machine to Mr. Weingart and to show him how to operate it, because he told me that he was totally ignorant of typewriters.

X-Q. 98. In Mr. Weingart's case, did you explain the history of the machine and the names of the makers, inventors, etc.?

A. I am quite positive that I did. In fact, I am

sure I did, because I never, during my intercourse with 883
the company that I can recall, sold a machine or placed one on trial without explaining this in full.

X-Q. 99. Now tell us, please, what you said to Mr. Weingart in this respect?

A. I am quite sure I told him how the manager of the Remington-Sholes Company was the son of the man who first made the Remington machine and how Mr. Sholes was the son of the man who invented the original Remington machine; that the two companies had no connection with each other.

X-Q. 100. And these statements were strictly in the 884
line of your instructions?

A. Yes.

X-Q. 101. Had you ever received these instructions from Mr. Franklin Remington himself?

A. Mr. Remington had repeatedly told us never to allow a customer to think that the Remington-Sholes Company was in any way connected with the Remington Company, and this little history regarding the inventing of the machine and its manufacture was embodied in the catalogues and also in our instructions, as we considered it a point of interest showing how talent in this line was transmitted from father to son. I 885
don't remember positively whether Mr. Franklin Remington told me this in words, but I am quite sure he called my attention to it in the catalogue.

X-Q. 102. At least, then, as stated by you in answer to X-Q. 99, you believed it to be true that the manager, Mr. Franklin Remington, was the son of the man who first made the Remington machine, and that Mr. Sholes, of the Remington-Sholes Company, was the son of the man who invented the original Remington machine?

A. Yes.

X-Q. 103. Did Mr. Franklin Remington also re-

886 peatedly tell you never to allow a customer to think that the Remington-Sholes Company was in any way connected with the Smith Premier Typewriter Company?

A. No.

X-Q. 104. Or any other typewriter company than the Remington Company?

A. No.

X-Q. 105. Then he confined his admonitions to you to the Remington Company, so called?

A. Yes.

X-Q. 106. And by that you mean the company or
887 concern manufacturing and selling the widely-known Remington or Remington Standard typewriter?

A. Yes.

X-Q. 107. Had you read any part of Mr. Weingart's testimony in this case or have you had any conversations in regard thereto with anyone prior to June 4, as above stated by you?

A. I had not read any part of his testimony, but in the early part of this year a representative of the Remington-Sholes Company, I think his name is Mr. Hansford, called upon me at my office and asked when it would be convenient, or if it would be convenient for me
888 to testify in regard to a sale of a Rem-Sho machine to Mr. Weingart, and he asked me if I recalled the circumstances. I gave him an answer, told him that I would testify, and that I did recall the circumstances. That was all the conversation I had.

X-Q. 108. Then between the time of the sale of the machine to Mr. Weingart and the date of the visit of Mr. Hansford you had no conversation about the Weingart sale?

A. None whatever.

X-Q. 109. At the time of the sale to Mr. Weingart did you make any memorandum of the facts or circumstances other than the fact of the sale itself?

A. Not that I can recall except what came in the regular course of business. 889

X-Q. 110. Therefore the details of conversations, facts and circumstances as testified to by you are given from memory or recollection solely?

A. Yes.

X-Q. 111. When Mr. Hansford first spoke to you about testifying did you recall all the facts and circumstances at that time precisely, as you have heretofore testified in this case?

A. Not all of them. Some of them were recalled upon reading Mr. Weingart's testimony; for instance, about the signs, etc., or his being under the impression that he was buying a Remington machine. 890

X-Q. 112. Did you recall anything else upon reading Mr. Weingart's testimony or on having it read or on conversing on the subject?

A. I don't know. My recollection, of course, has been refreshed a good deal by the examination in chief, and I can't say right now just exactly how many points I remembered at that time.

X-Q. 113. Can you say positively just what you did recall at the first interview with Mr. Hansford when he spoke about having you testify and before you knew anything about what Mr. Weingart had testified to? 891

A. Yes; I recalled having sold Mr. Weingart the machine to be shipped to that particular point, and I also remembered that I explained the machine pretty thoroughly to him, and I remembered that he had said that he was totally ignorant of typewriting machines and that I explained to him and showed him carefully how to put the paper in and out of the machine and various points.

X-Q. 114. Is that all you recalled at that time that you can now say?

892 A. That is all that I can now say that I recalled, but I didn't pay any special attention to the matter; in fact, from what Mr. Hansford said to me that day I thought that the suit was between the Remington-Sholes Company and Mr. Weingart about some matter and knew nothing whatever about the nature of the case, that is, that it was a suit between the Remington Company and the Remington-Sholes Company.

X-Q. 115. What is the nature of the business in which you are now engaged?

A. I am a clerk in the office of a concern which represents large cotton mills, print mills, handkerchief and
893 hosiery mills, etc.

X-Q. 116. You have been out of the typewriter business, then, since you left the employ of the Remington-Sholes Company about September, 1898?

A. I have had no connection with any typewriter concern since.

X-Q. 117. In explaining the memorandum on the bill, "Defendant's Exhibit Weingart Sale Slip, Commission to Hatch, $6.50," you have stated in answer to question 33 that after Mr. Weingart's first visit you told Mr. Hatch to call on Mr. Weingart at his New York ad-
894 dress. Do you know whether Mr. Hatch called on Mr. Weingart?

A. Mr. Hatch went out with that intention. I do not recall now whether he saw him or not.

X-Q. 118. Did he report to you that he saw him?

A. I don't remember that point, but I am quite sure that I had a talk with Hatch regarding the matter between Mr. Weingart's two calls.

X-Q. 119. Do you remember the nature of this conversation with Mr. Hatch?

A. I am under the impression that it was in regard to discount, that is, school discount.

X-Q. 120. I mean any conversation in regard to Mr. 895
Hatch's visit to Mr. Weingart at his New York address?

A. I don't remember that positively, but I think that there must have been, else I would not have given him the commission.

X-Q. 121. Then this is one of the circumstances about the Weingart purchase that you don't recall, is it?

A. This is a circumstance that I don't recall, and I don't consider that it was one which would have impressed itself upon me, because I virtually made the sale myself, and whether Mr. Hatch saw Mr. Weingart or not it did not affect his decision in the matter.

X-Q. 122. Then you can't recall that Mr. Hatch did 896
anything in and about the sale of the typewriter to Mr. Weingart?

A. No, but I am still of the opinion that Mr. Hatch and I had a conversation about the matter for this reason: that he was well posted in the typewriter business, for instance, on discounts and things of that kind usually allowed by the different companies, while I was comparatively a novice, and this was the first sale which I had consummated where school discount had come into force.

X-Q. 123. This matter of merely asking Mr. Hatch 897
about what discount to allow Mr. Weingart would not have entitled him to the commission, would it?

A. No, that fact alone would not, but as stated I asked him to call on Mr. Weingart; having done that the sale would naturally go on our books as one of his.

X-Q. 124. And yet you don't know that Mr. Hatch even called on Mr. Weingart?

A. I don't know it as an absolute fact, nor could I state it as an absolute fact, even if I recalled that Mr. Hatch had returned to the office and told me that he had done so; that case I could simply testify as to what Mr.

898 Hatch himself said, and not what I knew of my own knowledge.

X-Q. 125. But as I understand you, you do not even recall that Mr. Hatch returned to the office from a visit to Mr. Weingart, or if he did, what, if any, report he made thereon; am I right?

A. I do not recall that he did, but I am led to believe by the circumstances that he must have.

X-Q. 126. What circumstances do you refer to?

A. Why, I refer to the memorandum on the form, "Defendant's Exhibit Weingart Sale Slip," crediting Mr. Hatch with the commission.

899 X-Q. 127. While you are unable to recall the return of Mr. Hatch from Mr. Weingart's place, you are yet positive that you sent him to Mr. Weingart's establishment after Mr. Weingart's first visit to you?

A. I am quite sure that I asked him to call and that I did so on the very day that Mr. Weingart first called on me, after Mr. Weingart left the office.

*Re-Direct Examination by Mr. Fisher.*

R-D. Q. 128. In the course of your examination you have said, I think, that you sent lots of people who wanted the Remington office, or the store of Wyckoff,
900 Seamans & Benedict, but had called at your place instead, down to the Remington office. Can you state approximately about how many inquirers of this kind there were during the time that you were engaged at the office of Page, Dennis & Company in selling Rem-Sho typewriters?

A. Oh, probably ten or twelve. I can't say positively.

R-D. Q. 129. When such inquiries were made of you did you answer them directly or did you first endeavor to sell the inquiring parties a Rem-Sho typewriter?

A. I usually gave them a direct answer, but if I thought they were possible purchasers I would endeavor to interest them in our machine before they left the office. 901

R-D. Q. 130. Did you withhold the answer to their inquiry until after you had endeavored to interest them in the Rem-Sho machine?

A. No, I did not, but I would make a strenuous effort to interest them in our machine.

R-D. Q. 131. Do you know what the practice of typewriter manufacturers and dealers is or has been for several years past with respect to taking other makes of machines in exchange at the time of selling their own machines? 902

A. Yes; I think I do.

R-D. Q. 132. Please state what it is.

A. It was the custom, as I understood it, for any of the manufacturers to take old machines of other makes at their own appraisal as part payment for a machine of their own make.

THOMAS O. PARKER.

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT. 903

Wyckoff, Seamans & Benedict, *Complainant.*
vs.
Howe Scale Company of 1886, *Defendant.*
In Equity.

STATE OF NEW YORK, COUNTY OF NEW YORK, } ss.

I, L. M. Beehan, a Notary Public in and for the County of New York, duly commissioned and sworn, and Special Examiner pursuant to stipulation and agreement of the respective parties to the above-entitled

904 cause, hereto annexed, do hereby certify that on the 4th, 5th and 6th days of June, A. D. 1900, named in the testimony, evidence and depositions hereto annexed, I was attended at the office of Messrs. Donnelly & Felbel, Stewart Building, No. 280 Broadway, New York City, by Messrs. H. D. Donnelly, counsel for complainant, and George P. Fisher, Jr., counsel for defendant, and W. de Saussure Trenholm and Thomas O. Parker, witnesses for defendant, as appears by the documents and proceedings hereto annexed; that the said witnesses W. de Saussure Trenholm and Thomas O. Parker were
905 duly cautioned and sworn to testify the whole truth and carefully examined, and their depositions were reduced to typewriting by me in their presence and read to them by me and by them signed in my presence and in the presence of all of said counsel; that I am a skillful typewriter, and by consent of counsel said depositions and testimony hereto annexed were typewritten by me at the time they were taken; that the following exhibits, to wit, "Defendant's Exhibit Rem-Sho Sign from Office of Page, Dennis & Company," "Defendant's Exhibit Weingart Invoice," were introduced in evidence and are identified by my initials.

906 I further certify that I am not of counsel or attorney to either of the parties, nor interested in the event of the cause, nor am I related by blood or marriage to any of the officers of the complainant nor to the defendant in this suit, or its officers or members.

I further certify that I have authenticated by my signature and notarial seal the said depositions and proceedings aforesaid.

In testimony whereof I hereunto set my hand and official seal this 6th day of June, A. D. 1900.

L. M. Berman,

Notary Public and Special Examiner by

[SEAL.] stipulation and consent.

907

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict
*vs.*
Howe Scale Company of 1886. } In Equity.

The deposition of Mr. A. Clement, a witness produced on behalf of defendant and examined in pursuance of the annexed stipulation, at the office of Mr. C. U. Fisher, 19 Holborn Viaduct, London, England, before Francis Augustus Jones, Commissioner authorized to administer oaths and take depositions under the laws of England 908
and acting in this cause by consent, this 25th day of June, 1900.

ALEXANDER CLEMENT, being first duly sworn, deposed and says as follows, in answer to interrogatories propounded to him by Mr. G. P. Fisher, Jr.:

Q. 1. State your name, age, residence and occupation.

A. Alexander Clement; thirty-two years of age; residence, London; occupation, manager of the Addressograph Company for Europe.

Q. 2. Were you ever engaged in the sale of type- 909
writing machines at the City of Montreal, Canada, and if so, state when, and under what firm name or names?

A. Yes; from 1896 until 1898, under the name of Clement & Cuson; early in 1898 the firm name was changed to Clement & Clement; the firm of Clement & Clement carried on the business until August, 1899, when we sold out the typewriter business.

Q. 3. What typewriting machine or machines did the firm of Clement & Clement sell during the month of August, 1898?

A. We were then dealers for the Underwood type-

910 writer and Remington-Sholes typewriter for the Province of Quebec.

Q. 4. When did you begin to deal in the Remington-Sholes typewriter, and when did you cease to sell such machines?

A. We began selling the Remington-Sholes in 1896 and gave it up at the end of 1899.

Q. 5. From whom did you receive these Remington-Sholes typewriters?

A. From the Remington-Sholes Company, of Chicago.

Q. 6. What were your relations with the Remington-
911 Sholes Company during the year 1898; I mean during the entire year?

A. We always acted as dealers, buying the machines outright from that Remington-Sholes Company.

Q. 7. Was the firm of Clement & Clement responsible in any manner to the Remington-Sholes Company for the way in which said firm transacted its business or advertised the same?

A. No, sir.

Q. 8. Did the firm of Clement & Clement ever have any business relation with the Howe Scale Company of
912 1886, the defendant in this cause?

A. None whatever.

Q. 10. Did the firm of Clement & Clement ever have any correspondence with the said Howe Scale Company?

A. Never had any to my recollection.

Q. 11. I call your attention to a printed letter-heading and ask you to state whether you have ever seen the same before, and if so, what it is and in what way it was used?

A. This is one of our letter-heads of Clement & Clement used in the year 1898.

Q. 12. In what way was it used?

A. It was used in our correspondence for the sale of 913
the Underwood typewriter, the Rem-Sho typewriter, the Addressograph and the Rotary Neostyle.

The letter-heading identified by the witness is offered in evidence, and the same is marked "Defendant's Exhibit Clement & Clement Letter-Heading."

Q. 13. State if you recall what signs advertising the Remington-Sholes typewriter appeared in or about the office of Clement & Clement in Montreal.

A. We had the name of the Remington-Sholes on the entrance door, painted on the glass, and on the win- 914
dow in letters about five inches high, "Remington-Sholes Typewriter."

Q. 14. State if you recall what manufacturer's name and address appeared upon the Rem-Sho typewriters offered for sale by Clement & Clement.

A. I think the following were the words, just behind the keyboard: "Manufactured by Remington-Sholes Company, Chicago, Ill., U. S. A."

Q. 15. I call your attention to the printed catalogue of the Rem-Sho typewriter, and ask you to state whether you have ever seen catalogues like this before, and if so, when and where?

915

A. We had catalogues from the Remington-Sholes Company almost identical with the one just shown me. The difference which strikes me is that our catalogue were for No. 2 and No. 3 Rem-Sho typewriters, while the one which I have now in my hands is for No. 4 and No. 5.

Q. 16. I call your attention to the paragraph of page 22 of this catalogue, beginning with the words "In regard to our name," and I ask you to state whether you have ever seen a catalogue containing the statements set

916 forth in this page 22 and in the paragraph designated.

Question objected to upon the ground that the catalogue itself is the best evidence.

A. The catalogues that we had for distribution contained this very paragraph.

The catalogue shown the witness is offered in evidence, and the same is marked "Defendant's Exhibit R.-S. Catalogue, F. A. J. 2."

Q. 17. It has been testified in this cause by Mr. Thomas F. Crean, a witness produced on behalf of complainant, that on August 7th, 1898, he called at the
917 office of Clement & Clement in Montreal; that he was shown into an inner office and introduced to Mr. Clement and was informed that said Mr. Clement was the senior partner; that he (Crean) then and there stated that he had called to learn the address in Montreal of the office of the Remington typewriter, and that Mr. Clement answered: "This is the office of the Remington typewriter in Montreal." I ask you to state whether or not you recall having met Mr. Crean at the time and place above mentioned or at any time.

A. I do not remember having ever met Mr. Crean either in my office or anywhere else.

918 Q. 18. Who was the senior member of the firm of Clement & Clement?

A. I was.

Q. 19. Did you ever say to anyone in substance or effect, when referring to the Montreal office of Messrs. Clement & Clement: "This is the office of the Remington typewriter in Montreal"?

A. I never did; there was a strict rule in the office to always make it very plain to inquirers or intending purchasers that the Remington-Sholes typewriter was not the Remington Standard typewriter.

Mr. Schiller: I object to that question on

the ground that it is not evidence what rules were in force in the office of Clement & Clement. 919

Q. 20. Prior to the month of August, 1898, had you given any oral instructions to the persons employed in the office of Clement & Clement in regard to what statements or representations should be made with respect to the Remington-Sholes typewriter, and if so, state what such oral instructions were?

MR. SCHILLER: I object to that question on the ground that instructions given by this witness to his employés which were not in the presence of or communicated to the plaintiffs or their agents are not evidence. 920

A. I gave instructions to the effect that under no circumstances whatever should anyone be left under the impression that the Remington-Sholes typewriter had any connection whatever with the Remington Standard typewriter. This was the rule from the beginning of our handling the machine.

Q. 21. Did you ever show anyone a Remington-Sholes machine and state in substance or effect that such machine was a Remington machine?

A. I never did.

Q. 22. Did you ever tell anyone that the Remington-Sholes machine was made by the inventors and former manufacturers of the old Remington machine, or did you ever tell anyone that the Remington-Sholes machine was the new improved Remington machine? 921

A. I never did.

Q. 23. Did you ever tell anyone that Mr. Sholes had made some recent improvements on the old Remington and that these recent improvements had been embodied or combined with the good features of the old machine, and that such machine was the combined efforts of the Remington people and of Mr. Sholes?

922 A. I have sometimes said that the son of Mr. Sholes, who had something to do with the invention of the Remington typewriter, and that the son of Mr. Remington, who had manufactured the first Remington machine, were the inventors of the Remington-Sholes typewriter, but I never made any statements such as mentioned in the above question.

Q. 24. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If
923 yea, set forth the same fully and at large in your answer.

MR. SCHILLER: I object to that question on the grounds that it is too vague.

A. I don't think of anything further.

*Cross-Examination by Mr. P. M. Schiller, counsel for the complainant.*

X-Q. 25. Tell me, Mr. Clement, what was the firm of Clement & Clement, and what business did they carry on?

924 A. They were in business as typewriter dealers; we also controlled the addressograph and the rotary neostyle for Canada.

X-Q. 26. What street did they carry on business in?

A. Our office was in the Street Railway Chambers, corner Place d'Armes Hill and Craig street.

X-Q. 27. You have heard of the Remington Standard typewriter?

A. I know it very well.

X-Q. 28. That's a very well-known machine?

A. Widely known.

X-Q. 29. How many years has that been on the mar- 925
ket?

A. About twenty-five years.

X-Q. 30. And do you know the address of the Remington typewriter office?

A. Where?

X-Q. 31. In Montreal.

A. Yes.

X-Q. 32. I mean from the year 1896 to 1899.

A. Yes.

X-Q. 33. Where was it?

A. 112 St. Francois Xavier street.

X-Q. 34. How far was that from your office? 926

A. Five minutes' walk.

X-Q. 35. How long has the Remington-Sholes typewriter been on the market?

A. I heard of it for the first time in 1896.

X-Q. 36. Was that the first time it was sold in Montreal?

A. Yes, sir.

X-Q. 37. Who was the inventor of the Remington Standard typewriter?

Defendant's counsel objects to the question as immaterial and irrelevant, no foundation for such 927
question having been made in the direct examination of this witness.

A. I have heard that Mr. Sholes, Mr. Densmore, Mr. Yost, and several others have worked at it.

X-Q. 38. Had Mr. Remington anything to do with the invention of it?

Same objection.

A. I know nothing whatever about it.

X-Q. 39. You had shown you a catalogue with regard to the Remington-Sholes typewriter. Now, has Mr.

928 Remington's son anything to do with the invention of the Remington-Sholes typewriter?

Same objection, and the question is further objected to, as it has not been shown that the witness is qualified to answer the question.

A. I am unable to answer that question.

X-Q. 40. Know nothing about it?

Same objection.

A. I know nothing more than what is stated in the catalogue of the Remington-Sholes Company.

X-Q. 41. Do you know what business Mr. Remington's son carries on; I mean the Mr. Remington mentioned in the catalogue?

929

A. I have always known him to be one of the officers of the Remington-Sholes Company.

X-Q. 42. Do you know what he was before that?

A. I don't.

X-Q. 43. Do you know what interest he has in the Remington-Sholes Company?

A. I don't.

X-Q. 44. Can you tell me why Mr. Sholes, the son of the man who is stated in the catalogue to have invented the Remington typewriter, took Mr. Remington's son into partnership?

930

The question is objected to as immaterial and irrelevant, as assuming a fact not proven, and as being without foundation in the witness' direct examination.

A. I know nothing at all on this subject.

X-Q. 45. Have you ever seen any advertisement or catalogue or other printed matter of the Remington-Sholes Company, stating that the Remington-Sholes machine was the only machine now manufactured by a Remington?

A. I don't remember.

X-Q. 46. Will you swear that you haven't? 931

A. I will not, but to my recollection I have never seen it.

X-Q. 47. You have told us that you don't ever recollect Mr. Crean coming to call upon you, either at the office of Clement & Clement or elsewhere. Will you swear that he did not call?

A. I will not.

X-Q. 48. Then you won't pledge your oath that the statement of Mr. Crean that he called upon you on the 7th August, 1898, and was introduced to you as the senior partner of Clement & Clement in the inner room of your office is untrue? 932

A. No.

X-Q. 49. You won't pledge your oath, I suppose, that Mr. Crean did not come and tell you that he wanted to know the address of the offices of the Remington Standard typewriter in Montreal?

A. No.

X-Q. 50. And may I take it generally, you simply have no recollection of such a visit?

A. I have none.

X-Q. 51. But you won't swear that such a visit was not made? 933

A. I won't.

X-Q. 52. Are you prepared to swear that you never said, either to Mr. Crean or to anybody else, in the month of August, 1898, in your own office, "this is the office of the Remington typewriter in Montreal"?

A. Yes; I am.

X-Q. 53. If you have no recollection of such a visit, why are you so certain about it?

A. I am positive.

X-Q. 54. I ask you why?

A. Because it was the truth.

934 X-Q. 55. You have told me that you have no recollection of such a visit such as I have asked you about. How is it that you are so certain that you never made this statement which is sworn to by Mr. Crean?

A. I do not remember Mr. Crean's visit, as well as hundreds of others' visits which we may have had during the month of August, but I am ready to swear that I have never represented to Mr. Crean, if he has called, or to anyone else, that our office was the office of the Remington Standard typewriter.

X-Q. 56. You have not given me your reason yet as to why you are so certain. Why are you so certain?

935 A. The reason is very simple. My office was not the office of the Remington Company and therefore I did not represent it as being so.

X-Q. 57. That's the only reason?

A. I can't say any other except that with regard to the Remington-Sholes typewriter the greatest care has always been taken to let no one under the impression that it was the Remington Standard typewriter or the Remington typewriter.

X-Q. 58. Then if Mr. Crean says that on his calling on you you said, "This is the office of the Remington

936 typewriter in Montreal," that is inaccurate?

A. Most certainly so.

X-Q. 59. What are the Howe Scale Company?

A. It's a company manufacturing scales, I understand, in the United States.

X-Q. 60. Do you know if they are agents for the Remington-Sholes Company in the sale of their typewriter?

A. I know that they had something to do with it at the beginning, but I do not know if they are still agents of the company.

X-Q. 61. You say you had nothing to do with them?

A. No, sir, I had nothing to do with them.

X-Q. 62. Are you able to tell me why the Remington-Sholes Company adopted the name of Remington in their style of trading? 937

The question is objected to as not proper cross-examination, and for the further reason that the witness has not been shown qualified to testify in regard thereto.

A. I am not.

X-Q. 63. Now, you did tell inquirers, I think, that the Remington-Sholes machine was the result of improvement introduced by Mr. Sholes in the old Remington typewriter? 938

A. We may have said that the machine had valuable improvements over the Remington typewriter, just as we said that the Densmore had very valuable improvements over the Remington, but never in such a way as to put inquirers under the impression that either the Remington-Sholes or the Densmore typewriters were the Remington typewriter.

X-Q. 64. Have you not ever told anybody that the Remington-Sholes was in fact an improved Remington machine; that such improvement had been introduced by Mr. Sholes and by Mr. Remington, junior?

A. I most certainly have very often said that the 939 Remington-Sholes typewriter contained valuable improvements not to be found in the Remington typewriter.

X-Q. 65. That does not answer my question. I asked you whether in fact you did not represent the Remington-Sholes typewriter as an improved Remington machine, and that such improvement had been introduced by Mr. Sholes and Mr. Remington, junior?

A. We never did represent the Remington-Sholes as an improved Remington, but always pointed out that it was built on a radically different principle, which we

940 considered superior to the principle of construction of the Remington typewriter.

X-Q. 66. Was it in fact built on a radically different principle of construction?

The question is objected to as not proper cross-examination and as incompetent, the machines being the best evidence as the matter enquired about.

A. To the best of my mechanical knowledge, it was, and I think it was readily detected by enquirers.

X-Q. 67. In what respects did they differ radically?

Same objection.

941 A. The basket is shifted instead of the carriage.

X-Q. 68. Is that all?

A. There are some other minor differences.

X-Q. 69. Never mind about a minor difference. Anything radical I want.

A. The shifting of the basket.

X-Q. 70. You have told us that already, but what else, I say?

Same objection.

A. Interchangeable carriages, interchangeable letters.

942 X-Q. 71. Under what name did you sell this Remington-Sholes machine?

A. Rem-Sho and Remington-Sholes.

X-Q. 72. Was it always asked for under the name of Remington-Sholes?

A. Under both names.

X-Q. 73. Was it ever asked for under any other name?

A. No.

X-Q. 74. Was it ever asked for as a Sholes machine?

A. No.

X-Q. 75. Did you get any written orders for it? 943

A. We had a few.

X-Q. 76. Have you got any here?

A. No.

X-Q. 77. Can you lay your hands on any of the written orders?

A. No.

X-Q. 78. Where are they?

A. When we sold out our typewriter business we destroyed most of our correspondence, especially when we left Montreal and come over to London.

X-Q. 79. I suppose you were provided with the literature by the Remington-Sholes Company? 944

A. We were provided with catalogues.

X-Q. 80. Anything else?

A. A book of instructions came with each machine.

X-Q. 81. Anything else?

A. No.

X-Q. 82. Show cards?

A. No.

X-Q. 83. No leaflets?

A. No, we never had anything but catalogues. We printed our own circular.

X-Q. 84. Did you advertise at all? 945

A. We advertised the Remington-Sholes very little.

X-Q. 85. You did advertise them?

A. We mentioned the name in our advertisement.

X-Q. 86. Where did you advertise them and how?

A. In some newspapers and by means of blotters.

X-Q. 87. In a circular?

A. I don't think we ever had any circular printed specially for the Remington-Sholes.

X-Q. 88. Ah, but any circulars with the name of Remington-Sholes on it?

A. All our printed matter, giving the list of our

946 goods for sale, had the name of the Remington-Sholes included.

X-Q. 89. That would include circulars, I take it?

A. That includes all the printed matter we had.

X-Q. 90. That would include circulars?

A. Yes.

X-Q. 91. Did you have show cards?

A. No.

X-Q. 92. None whatever?

A. None whatever.

X-Q. 93. Now, in all these advertisements, of what-
947 ever kind they were, the word Remington would appear prominently on them?

A. No more prominently than the other words. As a matter of fact, we insisted less on the Remington-Sholes than on the Densmore, which was our leader.

X-Q. 94. That does not matter. Have you got any of those circulars and blotters and other advertisements which you can show us?

A. None. I might be able to find some relics in our office in Montreal.

X-Q. 95. The Remington Standard typewriter is widely known, is it not, in America and Canada under
948 the name of Remington simply?

A. Yes, sir.

X-Q. 96. You know something of the typewriter trade, don't you?

A. Yes, sir.

X-Q. 97. Now, in your opinion, as one having knowledge of the trade, don't you think that the title Remington-Sholes is likely to lead to confusion between a machine manufactured by the Remington-Sholes Company and the Remington Standard typewriter?

The question is objected to as not proper cross-examination, no foundation for such question hav-

ing been laid in direct examination of the witness. 949

A. My experience of two years with the Remington-Sholes has shown me that no such confusion has ever arisen, and my opinion is necessarily based on my experience.

X-Q. 98. How do you know that there has been no confusion?

A. Because we have never had anyone in our office who has mistaken the Remington-Sholes for the Remington typewriter, and we have never been helped in the least to sell a machine by the fact that the name Remington appeared in its name, Remington-Sholes. 950

X-Q. 99. How do you know that people have in your office never mistaken a Remington-Sholes machine for a Remington?

A. I know it from their remarks, in looking at a machine.

X-Q. 100. Did you see every machine that was sold to a customer?

A. Yes, sir, I did, in our office.

X-Q. 101. Not a single machine was sold in your office that you did not sell personally; is that it?

A. We sold about twenty, and I would swear that I have known personally the purchaser of every machine. 951 Some of the sales may have been initiated by employees, but I always concluded them.

X-Q. 102. How many of these machines did you sell altogether, from the date of your appointment by the Remington-Sholes Company?

The question is objected to as assuming a fact not proven, viz., that the witness was ever appointed an agent of the Remington-Sholes Company, and is further objected to as immaterial and irrelevant.

A. From the date I became dealer for the Reming-

952 ton-Sholes we must have sold about twenty machines, at the outside, in two years.

X-Q. 103. How many enquirers did you have in that time?

A. I cannot remember.

X-Q. 104. You did have enquirers, I suppose, apart from the people to whom you sold?

A. Certainly.

X-Q. 105. Many?

A. We had a certain number in the usual run of the business.

X-Q. 106. Did you see all the enquirers yourself
953 personally?

A. No, sir.

X-Q. 107. Then how are you able to say that the enquirers were not deceived by the title Remington-Sholes into thinking that that machine was the well-known Remington machine?

A. If they were deceived they did not buy.

X-Q. 108. Puts question again.

A. I know that they were not deceived because the rules of the office were to make it plain that the Remington-Sholes was not the Remington Standard type-
954 writer or the Remington typewriter or the Remington. The name Remington-Sholes in itself was sufficient to enlighten any one wanting to enquire about typewriters.

X-Q. 109. Is that the only means of knowledge you have?

A. That is.

X-Q. 110. You have told me that you were never helped by the title Remington-Sholes to sell one of your machines, by reason of the word Remington?

A. Yes, sir.

X-Q. 111. How do you know that?

A. I know it because every purchaser knew perfectly well that he was not buying a Remington type-

writer. If the name Remington has helped anything, we never could trace such help. 955

X-Q. 112. How do you know that your customers knew that they were not buying a Remington?

A. On account of the difficulty that we had in selling the Remington-Sholes side by side with the Remington when they were on trial.

X-Q. 113. Was the Remington machine on trial side by side with the Remington-Sholes in your office?

A. In the office of the purchaser.

X-Q. 114. I take it, purchasers who came to your office in every instance had no opportunity of comparing the Remington-Sholes machine with the Remington? 956

A. I don't remember a single one of our purchasers who had not in their own office one or more Remington Standard typewriters and who did not know that machine thoroughly. They therefore did not need any comparison made in our own office, and, as I said before, we never sold a machine in our office without sending it first on trial.

X-Q. 115. I ask you again: I take it that no purchasers who came to your office had any opportunity of there comparing the Remington-Sholes machine with the Remington? 957

A. Sometimes they have had the opportunity when we have had secondhand Remington machines.

X-Q. 116. Now give me a single instance when they had that opportunity?

A. I don't remember.

X-Q. 117. In your opinion, there is not the least likelihood, owing to the title or otherwise, of there being any deception between the Remington-Sholes and the Remington?

A. I don't believe so.

958 X-Q. 118. You had strict rules in your office that under no circumstances whatever should anyone be left under the impression that the Remington-Sholes typewriter had any connection with the Remington?

A. Yes, sir.

X-Q. 119. Was that a rule of your framing?

A. Certainly.

X-Q. 120. And that rule was a very strict one?

A. Yes, sir.

X-Q. 121. Was it a written rule?

A. No, sir.

X-Q. 122. How many assistants had you?

959 A. Two.

X-Q. 123. Did you impress that rule upon both of them?

A. Yes, sir.

X-Q. 124. Both together or on separate occasions?

A. Together and on separate occasions, more than once.

X-Q. 125. You attached great importance to that rule?

A. I did.

X-Q. 126. Can you tell me what was the necessity

960 of that rule, if there was not the least likelihood of there being any confusion between the Remington-Sholes typewriter and the Remington, by reason of the title only?

A. Because I did not want anyone in my office to attempt to create such a conclusion, although I don't believe they would have succeeded.

X-Q. 127. Did you have any reason to suppose that your employees would attempt to pass off a Remington-Sholes as a Remington?

A. None.

X-Q. 128. Then why attach such an enormous importance to this rule?

A. Because I had been informed by Mr. Fay that

the Remington Standard Typewriter Company wanted 961
to cause them trouble on account of the name, and it was in provision of such possible inquiry that I made this rule.

X-Q. 129. It was in view of possible litigation?

A. Yes.

ALEX. CLEMENT.

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

LONDON, ENGLAND, June 25th, 1900. 962

I, Francis Augustus Jones, a Commissioner duly authorized under and by virtue of the laws of England to administer oaths and take depositions under the laws of England, do hereby certify that this day personally appeared before me Mr. Alexander Clement, whose deposition is hereto annexed; that said Alexander Clement before deposing was sworn in due form to tell the truth, the whole truth and nothing but the truth concerning the matters whereof he should be interrogated; that thereupon by stipulation with counsel interrogatories and cross-interrogatories were propounded to the said witness and the said interrogatories and the answers of 963
the witness thereto were taken down upon a typewriting machine, under stipulation of counsel; that the witness having answered the interrogatories and cross-interrogatories propounded to him, read over and signed same in my presence; that complainant was represented by Mr. F. P. M. Schiller and defendant was represented by Mr. George P. Fisher, junior; that the taking of the deposition of the witness began at noon on the 25th day of June, 1900, at the place specified therein, and was concluded the same day, and said deposition was taken under and in pursuance of the annexed stipulation. I

964 further certify that I am in no wise connected with the parties at issue in this cause and have no interest whatever in the litigation.

FRANCIS AUGUSTUS JONES,
A Commissioner for Oaths.

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict
*vs.*
965 Howe Scale Company of 1886.

STIPULATION.

It is stipulated between the counsel for the parties hereto that the deposition of Mr. A. Clement may be taken as that of a witness on behalf of defendant before any Consular officer of the United States of America at London, England, or before any Notary Public or Justice of the Peace or other officer authorized to administer oaths and take depositions under the laws of England; that said deposition may be reduced to writing by any clerk duly authorized or appointed by said officer,
966 notary or justice of the peace, and that the deposition when taken shall be certified to by the officer before whom it is taken in the usual manner; that the examination of the witness shall be orally by question and answer and shall take place at any time after counsel for defendant has given reasonable notice to a solicitor to be hereafter designated by counsel for complainant as complainant's representative; that the deposition when taken and certified to shall be delivered to counsel for defendant, and that one copy thereof shall be delivered to complainant's representative, and that the expense of said deposition shall be borne in the first instance by de-

fendant, but shall be taxed with the costs of the case; 967
that said deposition may be used at the hearing of this cause and upon appeal with the same force and effect as if said deposition had been taken in this country in the usual and proper manner before an Examiner of this court.

Dated New York, June 6th, 1900.

H. D. DONNELLY,
Counsel for Complainant.
GEO. P. FISHER, JR.,
Counsel for Defendant.

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CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict, *Plaintiff,*
*vs.*
The Howe Scale Company of 1886, *Defendant.*

Met pursuant to notice. Present: H. D. Donnelly, Esq., for complainant; George P. Fisher, Jr., Esq., for 969
defendant.

NEW YORK, October 4, 1900, 10 A. M.

JOSHUA T. GILLELAN, a witness of lawful age, being first duly cautioned and sworn and called on behalf of defendant, testified as follows:

Q. 1. State your name, age, residence and occupation.

A. Joshua T. Gillelan; age, twenty-seven; residence, Philadelphia, Pennsylvania; occupation, agent for the Manhattan Typewriter Company.

970 Q. 2. Were you ever employed in selling the Remington typewriter, and, if so, state when, where and by whom?

A. I started to sell the Rem-Sho typewriter in Baltimore, Md., I think, about March, 1898. I sold them under my own name until about July of the same year. At that time I gave it up; the Tribune Cycle Company took the agency for it and I ran the typewriter department of it until the first of January, 1899, at which time I left them and they gave it up.

Q. 3. I call your attention to a business card, and ask you to state whether or not you ever seen cards like
971 this before, and, if so, state when and under what circumstances.

A. I, as previously stated, ran the business under my own name from about March until July, 1898, and I used that card, and I had stationery with practically the same matter on it, that is, letter-heads.

The business card shown the witness is introduced in evidence and marked "Defendant's Exhibit Gillelan Rem-Sho Card."

Complainant's counsel objects to the introduction in evidence of said card exhibit on the ground
972 that the same is immaterial and irrelevant.

Q. 4. Where was the office of the Tribune Cycle Company in Baltimore during the time that said company sold Rem-Sho typewriters?

A. 105 West Fayette street.

Q. 5. State, if you recall, how the Rem-Sho typewriters were marked that were offered for sale by the Tribune Cycle Company during the year 1898.

A. They were marked on the front bar of the frame above the keyboard with the words "Remington-Sholes Company, Mfrs., Chicago" and on the cover "Rem-Sho" in large letters.

Q. 6. State what catalogues, if any, relating to the Rem-Sho typewriter were exhibited in the office of the Tribune Cycle Company during the time that said company was engaged in selling the Rem-Sho typewriter. 973

A. They had a green catalogue with the number 2 and 3 model, calling it the Rem-Sho, and stated in the back of the catalogue that this machine was in no way connected with the Remington Standard typewriter, but that it was manufactured by the Remington-Sholes Company of Chicago.

Q. 7. I call your attention to "Complainant's Exhibit Rem-Sho Catalogue," and ask you to state how said catalogue compares with the catalogues exhibited at the office of the Tribune Cycle Company during the year 1898. 974

A. It seems to be the same thing.

Q. 8. State, if you know, by whom said catalogues were furnished to the Tribune Cycle Company.

A. They were furnished by the Howe Scale Company, who were representing the Rem-Sho at that time.

Q. 9. In what way were said catalogues used by the Tribune Cycle Company?

A. They were given to any one that might come in to look at a typewriter and mailed to various large users of typewriters throughout the city. 975

Q. 10. Did any one ever call at the office of the Tribune Cycle Company in Baltimore during the time said company was engaged in the sale of Rem-Sho typewriters and state that he had come at the suggestion of a Mr. Johnson, of Washington?

A. Yes, sir.

Q. 11. When did such person call at the office of the Tribune Cycle Company, as near as you can recall it?

A. I think it was some time in the early fall, as well as I can remember, of 1898.

976 Q. 12. State, if you know, who that party was.

A. I don't know, only what I have been told lately, that it was Mr. Crean.

Q. 13. State what, if anything, connected with Mr. Johnson or with Mr. Crean enables you to recall the visit made to the office of the Tribune Cycle Company by Mr. Crean in the fall of 1898.

A. Mr. McElroy, one of the firm of the Tribune Cycle Company, gave me a card one day of a man by the name of Johnson, representing himself to be from Washington, that had called to examine the Rem-Sho typewriter. He said he was very much pleased with
977 the machine and said that he would return to get one for himself and thought that he could place quite a number in Washington for us. He also left his card. When this man came in from Washington, at Mr. Johnson's suggestion, and told me of it, also said that they were liable to buy several machines, naturally I would be very much interested in his visit and tried to do business with him.

Q. 14. Did you ever have more than one call from any one who stated that he came at the suggestion of Mr. Johnson, of Washington, or who mentioned Mr.
978 Johnson's name in any connection?

A. No, sir.

Q. 15. Do you recall what Mr. Johnson's occupation was?

A. I think he was a stenographer in the Ways and Means Committee.

Q. 16. State, if you recall, whether any one came with Mr. Crean, or the party who said he had come at the suggestion of Mr. Johnson at the time of his visit to the office of the Tribune Cycle Company in the fall of 1898.

A. I could not say positively that there was. It ap-

pears to me that there was a young man with him, although I don't know positively. 979

Q. 17. State whether or not you gave to Mr. Crean or the party who called, as he said, at the suggestion of Mr. Johnson, any advertising material of the Rem-Sho typewriter.

A. I could not say positively that I did, but it was my custom to insist upon every one that called to take a catalogue with them.

Q. 18. State whether, in your conversation with this party who said he had come at the suggestion of Mr. Johnson and whom I shall hereafter, for convenience, refer to as Mr. Crean, you made any comparison between the Remington-Sholes or Rem-Sho typewriter and any other typewriting machine or explained to him any points of advantage possessed by the Rem-Sho typewriter. 980

A. I don't remember positively of explaining the difference between the Remington and the Rem-Sho, but very likely did, as it was our custom in explaining machines to show the advantage over all other machines.

Q. 19. Did Mr. Crean exhibit any familiarity with typewriting machines?

Complainant's counsel objects to the question as incompetent and improper, because it calls for the conclusion of the witness and not for his statement of what occurred. 981

A. I can't say that I remember whether he did or not.

Q. 20. Did Mr. Crean ask you the question, "Is this a Remington," or the question, "Is this an improved Remington," with respect to the Rem-Sho typewriter?

A. I don't remember of him asking of either question, but if he did he was told that it was an improve-

982 ment over the Remington and showed the improvements, as I never tried to misrepresent anything.

Q. 21. Did you ever state to Mr. Crean that the Rem-Sho typewriter was a Remington typewriter or that it was an improved Remington?

A. No, sir.

Q. 22. Did you ever make such statement to any one?

Question objected to by complainant's counsel as immaterial and irrelevant.

A. No, sir.

983 Q. 23. Did you ever say to any one, when referring to the Rem-Sho typewriter, that it was a new Remington?

A. No, sir.

Q. 24. Did you ever say to Mr. Crean that the Rem-Sho typewriter was manufactured by the former manufacturers of the old Remington or that it was invented by the inventors of the old Remington?

A. No, sir.

Q. 25. Did you ever state to Mr. Crean, with reference to the Rem-Sho typewriter, that Mr. Remington and Mr. Sholes, whose names were applied to the ma-

984 chine, formerly made the old Remington?

A. No, sir.

Q. 26. Did you ever state to Mr. Crean that Messrs. Remington and Sholes had sold the old Remington to people called Wyckoff, Seamans & Benedict?

A. No, sir.

Q. 27. Did you ever say to Mr. Crean that the only typewriting machine which the Remington people were now manufacturing was the Remington-Sholes typewriter?

A. No, sir.

Q. 28. Did Mr. Johnson, of Washington, ever place

a trial order for a Rem-Sho machine with the Tribune Cycle Company? 985

Complainant's counsel objects to the question as immaterial, irrelevant and incompetent.

A. No.

Q. 29. State what representations, if any, you made to Mr. Crean with respect to the Rem-Sho machine in connection with the Remington machine.

A. I don't remember of making any.

Q. 30. How are you able to state so positively that you never stated to Mr. Crean or to anyone else, when speaking with reference to the Rem-Sho typewriter, that 986
it was a new Remington, or an improved Remington, or that it was manufactured by the former manufacturers of the old Remington?

Complainant's counsel objects to the question as improper and incompetent, because it calls for the conclusion or opinion of the witness.

A. I was told by Mr. H. I. Seddon, who was at that time manager of the typewriter department for the Howe Scale Company, that the Rem-Sho was in no way connected with the Remington Typewriter Company, and that I should explain to people that it was not, in order to avoid any confusion that might arise. It was 987
also printed in the back of the catalogue that it was in no way connected with the Remington Company, and as I always insisted upon any one looking at the Rem-Sho to take a catalogue, it would be perfectly absurd for me to say that it was in any way connected with the Remington. I am not sure about what Mr. Seddon's connection was with the Howe Scale Company, only that he was manager of the typewriter department.

Complainant's counsel objects to all that part of the witness' answer preceding the last paragraph,

988 beginning with the words "I am not sure," upon the ground that the same is hearsay and the mere opinion or conclusion of the witness, and is therefore incompetent, and complainant moves to strike out that part of said answer.

Q. 31. When were these instructions given you by Mr. Seddon?

A. When I took the agency for the Rem-Sho.

Q. 32. Did you ever personally meet Mr. Johnson, of Washington, whose name has been mentioned in the foregoing questions?

989 A. No, sir.

Q. 33. Did you ever tell Mr. Crean that you knew Mr. Johnson?

A. No, sir; I suppose I told him I knew of him.

*Cross-Examination by Mr. Donnelly.*

X-Q. 34. How long have you been in your employment as agent for the Manhattan typewriter?

A. Since July 10th, 1900.

X-Q. 35. That is a machine which is sold in competition with the Remington typewriter and other typewriting machines now on the market, is it not?

990 A. Yes, sir.

X-Q. 36. Prior to your taking the agency for the sale of the so-called Rem-Sho typewriter, what experience, if any, had you had, either in the sale or use of typewriting machines?

A. I had been with the Remington typewriter for, I think, nearly two years in Baltimore, and with the Barlock in Chicago for about two years.

X-Q. 37. How long have you been acquainted with the Remington typewriter and known of its use by the public?

A. Since 1893.

X-Q. 38. And is it, according to your knowledge, a machine that has been largely used in and throughout the United States since 1893? 991

A. Yes.

X-Q. 39. When did you first become acquainted with the so-called Rem-Sho typewriter?

A. Well, I saw some of the Rem-Sho while in Chicago in 1894, I think. I think that was about the time it came on the market.

X-Q. 40. Up to the time when you first knew of the Rem-Sho machine, so called, had you ever known of any other concern than that which manufactured the Remington typewriter which used the name Remington upon or in connection with a typewriting machine or the sale thereof? 992

A. No, sir.

X-Q. 41. When you first became acquainted with the machine which is now designated or called the Rem-Sho, state, if you know, under what name it was designated.

A. Remington-Sholes.

X-Q. 42. Is it not a fact that the designation Rem-Sho is an abbreviation for the name Remington-Sholes, as you understand? 993

Defendant's counsel objects to the question as improper, no foundation whatever for this line of cross-examination being laid in the examination in chief.

A. Yes.

X-Q. 43. Is it not a fact that in all advertisements which you circulated during the time you sold the so-called Rem-Sho machine the name Remington appeared therein in connection with the name Sholes, and that the name Remington also appeared on the machines in connection with the name Sholes?

994 A. It appeared as Remington-Sholes Company, manufacturers, Chicago.

X-Q. 44. Then it is a fact that the name Remington in the connection you have stated always appeared, both in publications or printed matter and upon the typewriting machines sold by you?

A. Yes, sir.

X-Q. 45. To what extent did you sell or offer for sale the so-called Rem-Sho typewriter during the time that you were in the service of the Tribune Cycle Company, as you have stated?

995 Objected to as immaterial and irrelevant.

A. Well, I should think not more than thirty or forty machines.

X-Q. 46. Were such machines sold for use in or about Baltimore?

A. Yes, sir.

X-Q. 47. Did you have frequent inquiries for machines or concerning typewriting machines while you were in the service of the Tribune Cycle Company from persons who did not purchase?

A. Yes, sir.

X-Q. 48. Did the Tribune Cycle Company have any
996 sign upon its windows advertising typewriters for sale?

A. No, sir.

X-Q. 49. Did people ever make any inquiry as to the connection of the Remington-Sholes Company or the so-called Rem-Sho typewriter with the so-called Remington Company?

A. Yes, sir.

X-Q. 50. How frequently was that inquiry made of you by purchasers or prospective purchasers or by persons who were looking at typewriting machines during the period that you were agent for or sold or offered for sale the so-called Rem-Sho typewriter?

A. Not very frequently.

X-Q. 51. But occasionally that inquiry was made of you? 997

A. Yes, sir.

X-Q. 52. Did you ever see the statement in any catalogue issued by the Remington-Sholes Company that its machine was the only machine made by a Remington, or that in substance?

A. I don't exactly remember that. It seems to me that I may have seen it, but I don't remember it.

X-Q. 53. Do you remember of ever having heard that statement made by anyone connected with the Remington-Sholes Company at any time while you were agent for or sold the so-called Rem-Sho typewriter? 998

A. I don't remember of it, although it might have been said that Mr. Sholes and Remington were the only Sholes and Remington associated with the manufacture of a typewriter.

X-Q. 54. Do you recall ever having made that statement that Mr. Remington was the only Remington associated with the manufacture of a typewriter during the time that you were the agent for or sold or offered for sale the so-called Rem-Sho typewriter?

A. I don't remember of saying it. I might have said it.

999

X-Q. 55. Do you now recall ever having made any statement on any particular occasion with reference to the connection of Mr. Remington or Mr. Sholes with the so-called Rem-Sho typewriter?

A. No, sir, on no particular occasion.

X-Q. 56. I suppose that you frequently had conversations with purchasers and prospective purchasers and with people looking at typewriting machines in the office or store of the Tribune Cycle Company; is such the fact?

A. Yes, sir.

1000 X-Q. 57. And I suppose it is also a fact that you could not now repeat the language of the various conversations which you had with such persons concerning the so-called Rem-Sho typewriter; is that a fact?

A. I couldn't repeat the exact conversation I had with any one person at that time.

X-Q. 58. Do you know why Mr. Seddon explained to you that you were to explain to prospective purchasers or to persons who were examining the Rem-Sho typewriter that it was in no way connected with the Remington Typewriter Company, and, if so, state briefly why?

1001 A. I don't know.

X-Q. 59. Did Mr. Seddon explain to you or anybody else connected with the Remington-Sholes Company or the Howe Scale Company that you were to explain to people, prospective purchasers or purchasers of typewriting machines, that the so-called Rem-Sho typewriter was in no way connected with the Smith-Premier typewriter or the Barlock typewriter or any other typewriter or typewriting company in which the name Remington was not associated?

A. No, sir.

X-Q. 60. During the time that you were with the
1002 Tribune Cycle Company, where did it obtain its Rem-Sho typewriting machines?

A. We got them through the Howe Scale Company, of Philadelphia.

J. T. GILLELAN.

1003

WALTER M. WILGUS, a witness called on behalf of the defendant, having been duly sworn, testifies as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. Please state your name, age, residence and occupation.

A. Walter M. Wilgus; 1708 North 22nd street, Philadelphia; age, thirty-two; occupation, salesman.

Q. 2. Were you ever employed in selling Rem-Sho typewriters, and, if so, state when and where?

A. I started in August, 1898, at Philadelphia.

1004

Q. 3. By whom were you employed and how long did you continue in such work?

A. I was employed by the Remington-Sholes Company in the office of the Howe Scale Company, and continued until we removed from there in August, 1899.

Q. 4. Did you ever call upon a person at a hotel in Camden, New Jersey, relative to the sale of a Rem-Sho typewriter?

A. Yes, sir.

Q. 5. Did you ever call upon more than one person or at more than one time at a hotel in Camden, New Jersey, relative to the sale of a Rem-Sho typewriter?

1005

A. I called at the hotel in Camden, New Jersey, to see Mr. James Hood twice in one afternoon. These are the only calls I ever made at a hotel in Camden, New Jersey.

Q. 6. State the circumstances that led to your making this call or calls upon Mr. Hood at the hotel in Camden.

A. A party called on 'phone to the Howe Scale Company in Philadelphia, giving the name of James Hood, asking us to call at Camden at a certain hotel in regard to the sale of a typewriter.

1006 Q. 7. State what occurred or what you said at the time that you called upon Mr. Hood in Camden.

A. Mr. Hood stated that he was now prepared to purchase a machine about which there had been some negotiations. The price at that time was understood. He wanted the machine for exportation to Brooks & Company, Jamaica, West Indies. Wanted some advertising matter, etc., which I did not have present, but explained to him on the delivery of the machine I could deliver those papers at the same time.

Q. 8. What advertising matter did you deliver to the party representing himself as James Hood?

1007 A. Catalogues, newspaper clippings, instructions to salesmen, and I believe a circular on the telegraph contest.

Q. 9. What kind of catalogue did you deliver to Mr. Hood?

A. Descriptive catalogue of the Rem-Sho typewriter.

Q. 10. I call your attention to "Complainant's Exhibit Rem-Sho Catalogue," and ask you to state how it compares with the catalogue which you say you delivered to Mr. Hood?

1008 A. It is one of the same kind.

Q. 11. State, if you recall, what was contained in the other printed matter delivered by you to Mr. Hood and whether such printed matter gave the name and address of the parties by whom the Rem-Sho typewriter was manufactured.

A. The telegraph contest paper had the manufacturer's name on, Remington-Sholes Company, Chicago, Illinois. I don't believe the newspaper clipping did; I am not positive. It was relative to Mr. C. H. McGurrin having adopted the Rem-Sho typewriter in preference to other makes. It stated that McGurrin had used

the Remington Standard and Smith-Premier and I be- 1009
lieve other makes.

Q. 12. Did you call Mr. James Hood's attention to any particular part of the Rem-Sho catalogue that you gave to him?

A. I called his attention to nearly the last page in the catalogue, headed "In Regard to our Name."

Q. 13. At the time that you delivered the Rem-Sho machine to the party representing himself as James Hood, did you give him a bill or invoice with such machine?

A. Yes, sir, I gave him a receipted bill.

Q. 14. I call your attention to "Complainant's Ex- 1010
hibit Howe Scale Company's Invoice for Machine No. 3,309 of Sept. 16, 1898," and ask you to state whether or not that is the invoice that you gave to Mr. James Hood, so called?

A. Yes, sir, that is the same invoice.

Q. 15. Did you write this invoice yourself?

A. Yes, sir.

Q. 16. I observe that in this invoice the word Remington is in quotations. Please state who placed these quotation marks about the word Remington.

A. The quotation marks were not on the bill at the 1011
time of delivery. How they got there I know not.

Q. 17. What, if anything, was said by Mr. James Hood, so called, in regard to the invoicing of the Rem-Sho machine at the time this invoice was delivered to him by you?

A. Mr. Hood had an invoice of a prior date and wanted the new one made out "One typewriter, style Remington," which I refused positively to do.

Q. 18. What reason did you give Mr. Hood for refusing to modify the invoice as he requested?

A. I explained to Mr. Hood that it was not a Rem-

1012 ington machine, and therefore I could not bill it that way.

Q. 19. What reason did Mr. Hood give to you for wishing to have the invoice billed as "One Remington machine" or "One Remington typewriter"?

A. He stated that he had a requisition for a Remington typewriter, and to bill it that way would avoid any question with his party, but that he wanted to use our machine in place of the Remington.

Q. 20. Did Mr. Hood say anything to you in regard to the Remington typewriter or in regard to his having had anything to do with the Remington typewriter?

1013 A. He stated that his folks, presumably Brooks & Company, had been handling Remington typewriters, but he thought there would be quite a field for our machine in that territory.

Q. 21. Do you recall whether, in the course of your conversation with Mr. Hood, the names of Wyckoff, Seamans & Benedict were mentioned?

A. I don't believe the firm name was mentioned.

Q. 22. Did Mr. Hood say to you that he was familiar with the Remington typewriter?

Complainant's counsel objects to the question as

1014 leading.

A. From his general conversation and his statement that they had been handling quite a number of them in the territory where our machine was to be shipped, I presumed that he was thoroughly familiar with them.

Q. 23. Did you tell Mr. Hood that the Rem-Sho machine or the Remington-Sholes was made by former makers of the Remington machine?

A. No, sir, I did not.

Q. 24. Did you tell him that the Rem-Sho machine was an improved Remington?

A. No, sir; I told him it had several points of advantage over the Remington. 1015

Q. 25. Did you explain to him what those points of advantage were?

A. I explained to him the advantage of the platen lift, roller-bearing carriage and the pointer.

Q. 26. Was anything said in your conversation with Mr. Hood in regard to the style of the keyboard?

A. I don't remember that there was, although I have stated to most every one that we had a universal keyboard.

Q. 27. Did you tell Mr. Hood that the Rem-Sho or Remington-Sholes machine was made by former makers of the Remington machine? 1016

A. No, sir, I did not.

Q. 28. Did you ever make such statement to anyone?

Objected to as immaterial and irrelevant.

A. No, sir.

Q. 29. Did you request Mr. Hood to return to you the letter of instructions that you gave him?

A. No, sir. I stated that I would like to give him several copies, but could not; he could easily run some off himself. 1017

Q. 30. What reason did you give Mr. Hood for giving him this letter of instructions?

A. I believed that he intended to push this machine in the territory, and that the instructions would assist his party in successfully handling the Rem-Sho typewriter.

*Cross-Examination by Mr. Donnelly.*

X-Q. 31. With whom are you at present engaged in the occupation of a salesman in Philadelphia?

A. Sholes Typewriter Company.

1018 X-Q. 32. How long have you been in the employment of the Sholes Typewriter Company?

A. About four months.

X-Q. 33. What connection, if any, has the Sholes Typewriter Company with the Remington-Sholes Company or the Rem-Sho machine, so called?

A. They sell the Rem-Sho typewriter along with other makes.

X-Q. 34. Who, if anybody, is the general manager of the Sholes Typewriter Company in Philadelphia, under whom you are acting as salesman?

1019 A. I don't know as there is any manager. The firm is composed of two parties, I believe, Frank L. Sholes and W. T. L. Warthman.

X-Q. 35. Is the Frank L. Sholes referred to in your last answer the Mr. Frank L. Sholes formerly connected with the Remington-Sholes Company?

A. Formerly their manager in Philadelphia, yes, sir.

X-Q. 36. Prior to the time when you engaged in the service of the Remington-Sholes Company in the office of the Howe Scale Company, as you have stated, had you ever been engaged in the manufacture or sale of

1020 typewriting machines, and, if so, when, where and for whom?

A. No, sir.

X-Q. 37. When you visited Mr. James A. Hood at Camden, New Jersey, did you visit him at the Atlantic Hotel in that city?

A. It may have been the Atlantic; I was always under the impression it was the West Jersey Hotel.

X-Q. 38. Then, if I understand you, you do not now remember the name of the particular hotel which you visited on that occasion?

A. I was always under the impression that that was the name of the hotel, West Jersey.

X-Q. 39. Is that all the answer you can make to my last question? 1021

A. I may be mistaken about the name of the hotel, but even at the time of the sale I took it for the West Jersey Hotel.

X-Q. 40. What, if anything, did Mr. James A. Hood, so called, show you on the occasion of your visit at the hotel in Camden?

A. He showed me the original bill that he had for one typewriter.

X-Q. 41. I show you "Complainant's Exhibit Howe Scale Company Invoice, July 29, 1898," and ask you to examine the same and state whether you have ever seen the exhibit shown you before, and, if so, when. 1022

A. I believe this is the one he showed me at that time. He may have had another like it.

X-Q. 42. But it is your best recollection that said exhibit is the invoice which he showed you at the time of your interview with him at the hotel in Camden?

A. Yes, sir.

X-Q. 43. Do you know in whose handwriting said invoice is, and, if so, will you please state?

A. I believe it is in the handwriting of Mr. H. I. Seddon, although I am not positive. 1023

X-Q. 44. Had you seen Mr. Seddon's handwriting before I showed you the invoice, and, if so, where and when?

A. I had seen his handwriting while he was manager for the Remington-Sholes Company at Philadelphia.

X-Q. 45. In whose office was he then engaged as manager when you saw his handwriting?

A. Howe Scale Company, Remington-Sholes Company department.

X-Q. 46. I show you also "Complainant's Exhibit

1024 Howe Scale Company's Invoice for Machine No. 3,309 of Sept. 16, 1898," and ask you to examine the same and to say, if you know, in whose handwriting said invoice is.

A. In my own handwriting.

X-Q. 47. What part of the invoice, if any, is not in your handwriting?

A. The lead pencil notations, ink notation, "Recd. Sept. 16, '98," and the quotation marks at the beginning and end of the word Remington.

X-Q. 48. All the rest of the invoice is, as I understand you, in your genuine handwriting?

1025 A. Yes, sir.

X-Q. 49. Then, if I understand you, you wrote the words "Style Remington"?

A. Yes, sir.

X-Q. 50. Until this invoice was shown you to-day, had you seen it or examined it since you delivered it to Mr. James A. Hood, so called?

A. No, sir.

X-Q. 51. Prior to your examination on the stand to-day, had your attention been called to the fact whether or not there were any quotation marks about the name

1026 Remington in the invoice which you delivered to Mr. James A. Hood on Sept. 16, 1898?

A. No, sir.

X-Q. 52. Did you use any quotation marks in the invoice which you made out for Mr. James A. Hood?

A. I don't believe I used any; no, sir.

X-Q. 53. Are you sure you didn't?

A. Yes, sir.

X-Q. 54. And you are as sure of that as anything else that you have testified to in this case?

A. Yes, sir.

X-Q. 55. Did Mr. Hood show you a letter of any

kind at the time of your interview with him at Camden? 1027

A. Mr. Hood had a number of papers in his pocket, but I don't know as I paid any attention to any of them, being somewhat familiar with the anticipated purchase or sale.

X-Q. 56. Can you now say that he did not show you a letter which he had received and which was signed by Mr. H. I. Seddon?

A. I can't say that he didn't show it to me.

X-Q. 57. How long did your conversation with Mr. James A. Hood, so called, last on the occasions of your visits to the hotel in Camden? 1028

A. Not more than one hour in all.

X-Q. 58. I presume it is a fact that you do not now remember and are not able to state all the conversation which took place between you and Mr. James A. Hood, so called, on the occasion of your two visits in the hotel in Camden; is that correct?

A. I could not remember the entire conversation, only a drift of it.

X-Q. 59. I presume that you made no memorandum of the conversation, and that you made no particular effort to remember what was said or done after the transaction was closed; is that correct? 1029

A. I made no particular effort or memorandum.

X-Q. 60. When was your attention first called to these conversations or interviews after it occurred and by whom?

A. My attention was first drawn to this matter by a letter from Peirce & Fisher, Chicago, Ill., which was shown to me by Mr. Frank L. Sholes, probably about June of this year.

X-Q. 61. I understand you to say that Mr. James A. Hood, so called, asked you or requested you to give

1030 him some printed matter relating to the so-called Rem-Sho typewriter; is that correct?

A. Yes, sir.

X-Q. 62. Did he ask you to give him something covering the mechanical features or descriptive of mechanical features of the so-called Rem-Sho typewriter?

A. No, sir, he did not go into the mechanical construction at all.

X-Q. 63. I ask you to examine "Complainant's Exhibit Instructions to Agents by the Howe Scale Company," headed "Facts to Bear in Mind," and state whether you have ever seen that exhibit before and what
1031 you know about it.

A. This looks like the "Facts to Bear in Mind" given to the so-called Mr. Hood by me at the time of the conversation in Camden.

X-Q. 64. Please state where you obtained this exhibit headed "Facts to Bear in Mind" and how it came into your possession.

A. It is a matter of instruction to salesmen, and I received it from Mr. Seddon, manager of the Remington-Sholes Company.

X-Q. 65. And you received it, did you, in the Howe
1032 Scale Company's office from Mr. Seddon?

A. Yes, sir.

X-Q. 66. And did you receive these instructions from Mr. Seddon at the time you entered the service of the company in the Philadelphia office of the Howe Scale Company?

A. Yes, sir.

X-Q. 67. Did you read said instructions and follow them?

A. As near as possible I did.

X-Q. 68. And did you follow or use that part of the instructions which is found on page 9 of said exhibit?

A. Yes, sir.

X-Q. 69. Did you use that portion of said exhibit in offering for sale or making sales of the so-called Rem-Sho typewriter? 1033

A. Whenever the question was asked in regard to the name of the company I used those instructions.

X-Q. 70. Well, was the question ever asked?

A. Yes, sir.

X-Q. 71. By whom and how frequently?

A. It has been asked by a number of parties, "Have you any connection with the Remington Company?" and I would then explain that we had no connection whatever with the Remington Standard typewriter and invariably referred them to that part of our catalogue 1034 which is marked "In Regard to our Name."

X-Q. 72. What did you tell them about Mr. Remington?

A. I invariably opened the catalogue to that page, which seemed to satisfy the parties inquiring.

X-Q. 73. What did you tell them about the connection of the Remington-Sholes Company with the old Remington Standard?

A. I told them it had no connection whatever with the old Remington Standard.

X-Q. 74. Did you follow out the instructions contained in "Facts to Bear in Mind" in that respect? 1035

A. According to my interpretation, I did.

X-Q. 75. Did you tell them that the Remington-Sholes Typewriter Company was the second generation of typewriter builders of the name Remington?

A. I never represented the firm as the Remington-Sholes Typewriter Company.

X-Q. 76. Did you tell anybody that the same standard of excellence was being maintained in the manufacture of the Rem-Sho machines as in the case of all goods produced by the Remingtons, or that in substance?

A. Yes, sir.

1036 X-Q. 77. Did you ever tell anybody that it was the only machine on the market which was manufactured by a Remington?

A. Yes, sir, I told them, "It is the only machine that is now manufactured by a Remington."

X-Q. 78. And I suppose you got that statement from the Remington-Sholes catalogue or some other source?

A. I believe I did.

X-Q. 79. How often did you make that statement while you were acting as salesman for the sale of Rem-Sho typewriters?

A. I don't know, but was never at all backward.

1037 X-Q. 80. You used that statement frequently, I suppose?

A. Yes, sir.

X-Q. 81. Why?

A. Because that is the impression that I am under.

X-Q. 82. Did you think it advantageous to make that statement in the sale of typewriting machines?

A. I don't believe that statement alone would sell a typewriter.

X-Q. 83. Do you think it helped to sell any typewriters?

1038 A. Undoubtedly the name of Remington helps along with the merits of the machine.

X-Q. 84. It is a name that has long been associated with a typewriting machine, is it not?

A. Yes, sir, as well as other high-grade goods.

X-Q. 85. How long have you known of the name Remington being associated with a typewriting machine?

A. Probably fifteen years.

X-Q. 86. And is that the machine which is now being manufactured and sold by Wyckoff, Seamans & Benedict?

A. They have changed their models or improved the machine, Remington Standard typewriter, but that is the machine. 1039

X-Q. 87. And it is your judgment, is it, that the association of the name Remington with the so-called Rem-Sho machine has been of advantage to the Remington-Sholes Company or its agents in the sale of their machine?

A. In some cases it has, while in other cases some people have hesitated on that account.

X-Q. 88. Why did they hesitate on that account?

A. On account of the name Remington they would very often want to be assured that they were in no danger of any liability for using this new machine, "Rem-Sho." 1040

X-Q. 89. They hesitated, were reluctant to take it, on account of the use of the name of Remington; is that what you mean?

A. Yes, sir.

X-Q. 90. While you were in the office of the Howe Scale Company or Remington-Sholes Company in Philadelphia did anybody ever call there, to your knowledge, and inquire if that was the Remington office or the place where the Remington machine was sold? 1041

A. Yes, sir; I have had such inquiries.

X-Q. 91. How frequently?

A. Not very frequently; in fact, seldom, but always referred them to 9th and Chestnut streets, Philadelphia, which was the office of Wyckoff, Seamans & Benedict.

X-Q. 92. Is your recollection so clear and distinct as to your interview with Mr. James A. Hood, so called, that you can now state just what you said and all you said concerning the so-called Rem-Sho typewriter and its history and the origin of its name at the time of

1042 your interviews with him at Camden, N. J., which you have stated occupied about an hour?

A. No.

WALTER M. WILGUS.

CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF VERMONT.

1043 Wyckoff, Seamans & Benedict, *Complainant,*
*vs.*
Howe Scale Company of 1886, *Defendant.*
} In Equity.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

I, L. M. Beehan, Notary Public in and for the said County of New York, duly commissioned and sworn, and Special Examiner pursuant to stipulation and agreement of the respective parties to the above-entitled
1044 cause hereto annexed, do hereby certify that on the 4th day of October, A. D. 1900, named in the testimony, evidence and depositions hereto annexed, I was attended at the office of Messrs. Donnelly & Felbel, No. 280 Broadway, New York City, by Messrs. H. D. Donnelly, counsel for complainant, and George P. Fisher, Jr., counsel for defendant, and Joshua T. Gillelan and Walter M. Wilgus, witnesses for defendant, as appears by the documents and proceedings hereto annexed; that the said witnesses Joshua T. Gillelan and Walter M. Wilgus were duly cautioned and sworn to testify the whole truth and carefully examined, and their depos-

tions were reduced to typewriting by me in their pres- 1045
ence and in the presence of all of said counsel; that I am a skillful typewriter, and by consent of counsel said depositions and testimony hereto annexed were typewritten by me at the time they were taken; that the following exhibit, to wit, "Defendant's Exhibit Gillelan Rem-Sho Card," was introduced in evidence and is identified by my initials.

I further certify that I am not of counsel or attorney to either of the parties, nor interested in the event of the cause, nor am I related by blood or marriage to any of the officers of the complainant, nor to the defendant in this suit, or its officers or members. 1046

I further certify that I have authenticated by my signature and notarial seal the said depositions and proceedings aforesaid.

In testimony whereof, I hereunto set my hand and official seal this 4th day of October, A. D. 1900.

L. M. BEEHAN,

[SEAL.] Notary Public and Special Examiner by stipulation and consent.

1047

1048

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict
*vs.*
The Howe Scale Company of 1886. } In Equity.

Proceedings had on behalf of defendant before Alberta Adamick, Notary Public and Special Examiner by consent, met pursuant to stipulation of parties, at the office of Peirce & Fisher, No. 115 Monroe street, Chicago, on Wednesday, October 24, A. D. 1900, at 11
1049 o'clock A. M.

Appearances: H. D. Donnelly, Esq., and Josiah McRoberts, Esq., for complainant; George P. Fisher, Jr., Esq., for defendant.

And thereupon the following proceedings were had:

Counsel for defendant offers in evidence a Patent Office copy of certificate of registration of the trade-mark or name "Rem-Sho," registered by the Remington-Sholes Company, Chicago, Illinois, under date of October 19, 1897, and numbered 30,719, and the same is marked "Defendant's Exhibit Remington-Sholes Company Reg-
1050 istration of Trade-Mark Rem-Sho." Counsel for complainant, while waiving all objection to said copy upon the ground that the same is uncertified, and while admitting that said copy may be received with the same force and effect as the original, objects to the introduction in evidence of said certificate of registration upon the ground that the same is immaterial, irrelevant and incompetent.

Counsel for defendant being interrogated by counsel for complainant as to when the word "Rem-Sho" was first used as a telegraphic code word by the Remington-Sholes Company or its predecessors, Charles N. Fay

and the Remington-Sholes Typewriter Company, states upon the record and admits the fact to be that said word "Rem-Sho" has been continuously used as an abbreviated telegraphic code address by said Remington-Sholes Company and its said predecessors since about August 23, A. D. 1895. 1051

Counsel for defendant offers in evidence a press-copy of a letter addressed to Mr. William Carcaba, at St. Augustine, Florida, under date of February 20, 1899, and signed by C. N. Fay, and the same is marked "Defendant's Exhibit Fay's Letter to Carcaba, February 20, 1899."

Counsel for defendant offers in evidence an original letter addressed to the Remington-Sholes Company, Chicago, Illinois, under date of March 2, 1899, and signed by William Carcaba, to which letter is attached a newspaper advertisement of the Rem-Sho typewriter, and the same is marked "Defendant's Exhibit Carcaba Letter and Advertisement, March 2, 1899." 1052

Counsel for defendant offers in evidence copy of a letter addressed to Mr. William Carcaba, St. Augustine, Florida, under date of March 6, 1899, and signed by C. N. Fay, and the same is marked "Defendant's Exhibit Fay's Letter to Carcaba of March 6, 1899."

It is admitted by counsel for complainant that the said letters, viz., "Defendant's Exhibit Fay's Letter to Carcaba, February 20, 1899," and "Defendant's Exhibit Fay's Letter to Carcaba, March 6, 1899," are true copies of letters written by said Fay to said Carcaba at the dates specified and at such times duly mailed to said Carcaba by said Fay, and it is admitted that "Defendant's Exhibit Carcaba Letter and Advertisement, March, 2, 1899," was written and mailed by said Carcaba at the date thereof to said Remington-Sholes Company and that said advertisement attached 1053

1054 to said letter accompanied said letter when it was received by said Remington-Sholes Company from said Carcaba on or about March 4, 1899, and counsel for complainant admits that said advertisement was by said Carcaba caused to be published in the St. Augustine Daily Herald at St. Augustine, Florida, between February 22, 1899, and March 2, 1899, and from that time forth whenever said Carcaba advertised in said newspaper the typewriter by him offered for sale. And it is agreed that at any time within thirty days from the date hereof defendant may introduce in evidence any copies of the St. Augustine Daily Herald between the
1055 dates of February 22, 1899, and March 30, 1899, for the purpose only of showing advertisements like the advertisement attached to "Defendant's Exhibit Carcaba Letter and Advertisement, March 2, 1899."

It is stipulated that at the several dates when said Carcaba caused advertisements of typewriting machines to be published in the St. Augustine Daily Herald he (the said Carcaba) was a dealer in merchandise and was offering for sale the so-called "Rem-Sho" typewriters, manufactured by the Remington-Sholes Company, of Chicago, and by said company sold to said Car-
1056 caba, and that at such times the said Carcaba was the local dealer for the sale of the said Rem-Sho typewriting machine for the territory including the City of St. Augustine, Florida, together with the territory running half way thence to Jacksonville and half way thence to Tampa in said State of Florida; that said Carcaba was originally appointed as such dealer by Page, Dennis & Company, of 341 Broadway, New York City, and that from and after February 18, 1899, said dealership was continued by the Remington-Sholes Company. It is admitted by counsel for defendant that the electrotypes for the illustrations of typewriting machines appearing

in the said several advertisements in the St. Augustine Daily Herald were furnished to said Carcaba by the Remington-Sholes Company on the first day of November, 1898. 1057

Counsel for defendant now produces Henry Hochklassen, who has heretofore been examined as a witness on behalf of defendant, and having now first instructed said Hochklassen to answer the question which said Hochklassen under advice of counsel for defendant heretofore declined to answer, offers said Hochklassen for such further cross-examination as counsel for complainant may see fit to make, and offers also to take at this time the deposition of said Hochklassen *de novo* if counsel for complainant so desires. Complainant's counsel declines to further cross-examine Mr. Hochklassen. 1058

It is hereby stipulated (for the purposes of this litigation but for no other purpose), by and between the parties hereto by their respective solicitors, as follows:

I. That on or about the month of December, 1896, Charles N. Fay, then president of the Remington-Sholes Typewriter Company, did in his own individual name and capacity, but in truth and in fact as trustee for himself and other stockholders, purchase and hold the whole of the machinery, tools, stock and other personal property of the Remington-Sholes Typewriter Company, together with the good-will of the business of said company and the exclusive right to the trade-marks, trade-names and like indicia theretofore used in and about said business of manufacturing and selling typewriting machines by the Remington-Sholes Typewriter Company and did continue the manufacture of typewriting machines in the same building and with the same plant theretofore used by the said Remington-Sholes Typewriter Company; that on or about April 1059

1060 12, 1897, the charter of the said Remington-Sholes Typewriter Company was lawfully surrendered, and in the month of April, 1897, the Remington-Sholes Company was organized and said Remington-Sholes Company did thereafter purchase (by issuing certain of its stock in payment therefor) all the machinery, tools, stock and personal property and as well also the good-will of the business and all trade-names, trade-marks and the like theretofore used by said Fay and by said Remington-Sholes Typewriter Company in and about his and its business of manufacturing typewriting machines; and that since said organization of and purchase
1061 by the said Remington-Sholes Company it has continued at the same location theretofore occupied by said Fay and by said Remington-Sholes Typewriter Company to carry on the said business of manufacturing and selling typewriting machines, using the said property, trade-names, trade-marks, etc.; that after the organization of the said Remington-Sholes Company the stock of said company was divided into common and preferred stock and the said common stock was issued to subscribers therefor in consideration of the procurement by them of a good title from said Fay to the above-men-
1062 tioned machinery, tools, stock, personal property, good-will of business, trade-names, trade-marks, etc., theretofore used by said Fay and by said Remington-Sholes Typewriter Company.

II. In order to save the attendance of counsel at this time for the taking of further depositions on behalf of defendant at Pittsburg, Pennsylvania, counsel for complainant agrees that the deposition of either of the members of the firm of Robbins & Kunkel, of Greensburg, Pa., may be taken at Pittsburg or at Greensburg, Pa., at the first session of the taking of rebuttal depositions on behalf of complainant at such point; but in event

counsel for complainant decides and so notifies counsel for defendant that he will take no rebuttal testimony at Pittsburg, Pa., then counsel for defendant shall take said deposition of Robbins or Kunkle immediately prior to the first session of taking rebuttal depositions on behalf of complainant in New York City. But in agreeing to the taking of such depositions on behalf of defendant, counsel for complainant expressly reserves the right to make any and all objection to such deposition that he might make thereto if said deposition were now taken. 1063

III. It is agreed between counsel that at the first session for the taking of rebuttal depositions in New York City the defendant's counsel shall have the right to call Mr. Page, of Page, Dennis & Company, or in case of his inability, Mr. W. F. Lewis, and to examine him as regards the approval of the advertisement of the Remington-Sholes typewriting machine appearing in "Complainant's Exhibit St. Augustine Herald No. 1 of January 23, 1899," "Complainant's Exhibit St. Augustine Herald No. 2 of February 10, 1899" and "Complainant's Exhibit St. Augustine Herald No. 3 of February 8, 1899." 1064

Counsel for defendant offers in evidence a copy of a letter addressed to Messrs. Wyckoff, Seamans & Benedict, under date of January 22, 1896, and signed by F. Remington, general manager, and the same is marked "Defendant's Exhibit Remington Answer to Wyckoff, Seamans & Benedict Notification." It is admitted by counsel for complainant that said copy is a true copy and may be received with the same force and effect as the original, as evidence of the fact that such a letter was written and was mailed in usual course to the party to whom it is addressed, and at or about its date. Counsel for complainant does not admit the correctness of any statement contained in the letter, and says that defend- 1065

1066 ant shall not avail of said letter as evidence of any fact therein stated in this case, and it is hereby agreed by the defendant's counsel that said letter shall not be evidence in this case for any purpose, except as evidence of the fact that such a letter was written and mailed as above stated.

It is admitted by counsel for defendant that the MS. postscript appearing upon the letter offered in evidence as "Complainant's Exhibit Seddon-Romig Letter July 19, 1898," is in the genuine handwriting of said Romig.

Counsel for defendant admits that at the time this suit was brought the Howe Scale Company of 1886 was
1067 the general sales agent for the United States of the Remington-Sholes Company, and further admits that said Remington-Sholes Company has assumed the defense of this litigation and has agreed to pay all expenses incident to the defense thereof, and has agreed to protect and save harmless the said Howe Scale Company of 1886 with respect thereto.

Counsel for defendant offers in evidence an advertisement of the Remington-Sholes Typewriter Company appearing on the backbone of the cover of the Lakeside Business Directory of Chicago, July, 1894; also an ad-
1068 vertisement of the Remington-Sholes Typewriter Company appearing upon page 660 of said directory; also an advertisement of said Remington-Sholes Typewriter Company appearing upon page 1466 of said business directory, and the said business directory containing said advertisements is marked "Defendant's Exhibit Old Advertisements in Chicago Business Directory."

It is agreed between counsel that said business directory containing the advertisements offered in evidence was published and circulated at the City of Chicago in the year 1894, and that said advertisements were paid for and caused to be published by the Remington-Sholes

Typewriter Company, the corporation of that name mentioned in the foregoing stipulation. And further, that where a business house or concern is mentioned and referred to in said directory in plain (not bold face) type, said reference or designation was made by the publishers of the said directory without compensation. And further, that the designation or reference "Remington Standard Typewriter, Wyckoff, Seamans & Benedict, 175 Monroe," appearing in plain type on page 660 of said directory was so made, and appears immediately beneath the following: "Remington-Sholes Typewriter Co., C. N. Fay, pres; F. H. Head, v. pres; F. Remington, gen. mngr; Z. G. Sholes, supt; C. E. Anderson, sec. and treas; genl. offices 53 Dearborn." 1069 1070

Counsel for complainant objects to the introduction in evidence of the said Chicago Business Directory and the advertisements contained therein as immaterial, irrelevant, and as mere hearsay testimony.

Counsel for defendant announces upon the record that before the hearing of this cause he will insist upon all objections made by him in the course of the taking of the testimony and particularly such of said objections as relate to questions, answers and exhibits concerning foreign advertisements, circulars, publications, or other matters outside the United States, and that he will move the court that all such matters so objected to be stricken from the record. 1071

And thereupon defendant rests.

1072

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict
vs.
The Howe Scale Company of 1886. } In Equity.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

I, Alberta Adamick, a Notary Public in and for the
1073 county and state aforesaid, and acting as Special Examiner by consent pursuant to stipulation and agreement between the respective parties to the above-entitled cause, do certify that on the 24th day of October, A. D. 1900, at 11 o'clock in the forenoon, I was attended at the office of Messrs. Peirce & Fisher, No. 115 Monroe street, Chicago, by Messrs. H. D. Donnelly and Josiah McRoberts, counsel for complainant, and George P. Fisher, Jr., counsel for defendant; that the proceedings hereinbefore recited were had before me in manner and form as therein stated; that Henry Hochklassen, the party of that name mentioned in said proceedings, was
1074 produced and offered as a witness on behalf of defendant, said Hochklassen having been heretofore sworn as a witness in this case and having heretofore testified herein; that said proceedings were reduced to writing by me; that the various exhibits in said proceedings mentioned were introduced in evidence as therein stated and were by me marked and identified.

I further certify that I am not of counsel or attorney to either of the parties, nor interested in the event of the cause, nor am I related by blood or marriage to any of the officers of the complainant nor of the defendant in this suit.

In testimony whereof I hereunto set my hand and official seal this 26th day of October, A. D. 1900. 1075

ALBERTA ADAMICK,
Notary Public and Special Examiner
[SEAL.] by stipulation and consent.

JOHN E. KUNKLE, a witness called on behalf of defendant, after being duly sworn, testified as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, age, residence and occupation. 1076

A. My name is John E. Kunkle; aged thirty-eight; live in Greensburg, and am by occupation an attorney at law; member of the Westmoreland County bar.

Q. 2. Are you a member of the law firm of Robbins & Kunkle, of Greensburg, Pa.?

A. Yes, sir.

Q. 3. Has the firm of Robbins & Kunkle a typewriting machine in its office, and if so, what make of machine?

A. We have a machine called the Rem-Sho typewriter.

Q. 4. How long have you had the Rem-Sho typewriter? 1077

A. About two years and a half, or a little longer.

Q. 5. Prior to the time when you purchased the Rem-Sho typewriter, had the firm of Robbins & Kunkle owned or was it using any other make of typewriter?

A. Previous to the time of the purchase of the Rem-Sho machine we used a Remington typewriter for a number of years.

Q. 6. From whom did you purchase the Remington typewriter?

1078 A. We had at least two different Remingtons, and possibly three, and my recollection now is that they were purchased either directly from Mr. Martin in Pittsburg here or from an agent who visited Greensburg.

Q. 7. What became of the Remington typewriter which you used prior to the purchase of the Rem-Sho typewriter?

A. We transferred that to the Howe Scale Company of 107 Market street, Pittsburg, as part payment on the Rem-Sho typewriter.

Q. 8. From whom did you purchase the Rem-Sho typewriter, and at what time?

1079 A. I have no recollection of the dates, except what is on the papers here.

Q. 9. Did you receive with the Rem-Sho machine that you purchased from the Howe Scale Company any invoice?

A. We did.

Q. 10. Can you produce the same?

A. Here it is.

Q. 11. How was this invoice received?

A. By mail.

Q. 12. When did you first see the invoice?

1080 A. I believe on May 12th, 1898.

The invoice referred to by witness is offered in evidence, and the same is marked "Defendant's Exhibit Robbins & Kunkle Invoice for Rem-Sho Machine."

Q. 13. Did you have any correspondence with the Howe Scale Company regarding this Rem-Sho machine at or about the date of said invoice?

Complainant's counsel objects to the question as incompetent, for the reasons set forth in his objection to direct question 9 of V. E. Williams, one of defendant's witnesses, and also as immaterial and

irrelevant, and it is understood and agreed between 1081
counsel that this objection shall apply to all subsequent questions and answers of the witness to which such objections are applicable or pertinent without repetition thereof.

A. I don't recollect of any of such correspondence, although there may have been such. My recollection is that the purchase was made from the agent, Mr. Scorer, who visited Greensburg.

Q. 14. At the time of your purchase of the Rem-Sho typewriter, did your firm have any written agreement with the Howe Scale Company in regard thereto? 1082

A. We had.

Q. 15. Can you produce such agreement?

A. Yes, sir; this is the agreement.

(Witness produces paper.)

Counsel for defendant offers in evidence the agreement referred to, and the same is marked "Defendant's Exhibit Robbins & Kunkle Agreement with Howe Scale Co., May 12, 1898."

Q. 16. Please state the circumstances under which your firm of Robbins & Kunkle ceased using the Remington typewriter and began using the Rem-Sho. 1083

A. In the spring of 1898 Mr. Scorer came to Greensburg and called at our office and stated that he was the agent representing the Rem-Sho typewriter, and desired to introduce the machine that he was representing to as many people in Greensburg as he could. We talked the matter over, the principal dealing in the matter was with myself. Mr. Robbins knew very little about the matter. He stated that the Rem-Sho typewriter was of good material, first-class workmanship and a first-class typewriter in every respect, and made us what we considered a fair offer to take our Remington machine as

1084 part pay on a new machine which he was selling at that time. We accepted his offer, and the machine was shipped to us, and is the same machine that we are now using. I can't just recollect everything that was said, but this is the substance of the transaction.

Q. 17. Did Mr. Scorer at that time and prior to your purchase of the Rem-Sho typewriter compare it with any other machine or set forth its points of advantage over any other machine?

A. I don't know that he mentioned any other machine specially except the Remington which we were
1085 using at that time. He pointed out different points in the machine—different points in the Rem-Sho machine which he considered as being an advantage over the Remington. Just what those points were I can't state just now. He stated nothing detrimental about the Remington machine, saying it was a good machine, but he did say that his machine was equally as good as the Remington.

Q. 18. Did Mr. Scorer tell you that the Rem-Sho machine was the same as the Remington machine?

A. No; he didn't say that.

Q. 19. Did you understand at the time your firm
1086 bought the Rem-Sho machine that it was the same as the Remington typewriter, or was manufactured by the same parties, or that it was a competing machine?

A. I understood from him that it was a different machine, made by a different party, and that it was at that time and would be a competing machine with the Remington.

Q. 20. Do you recall whether at the time of his visit to you concerning which you have testified Mr. Scorer gave you any card?

A. Yes, sir; he gave me one card, I know, but I don't know what become of it; I have been unable to locate it. I presume that it has been lost.

Q. 21. State, if you can recall, what was upon the 1087
card.

A. I remember very distinctly the words Rem-Sho being on the face of the card in large letters, and I also believe that there was some picture of the machine also on the card and with his name either at the lower side or at the one corner of it as agent of the machine.

Q. 22. Did Mr. Scorer tell you by whom the Rem-Sho machine was manufactured or sold?

A. Nothing more than I understood from him that the machine was being manufactured in Chicago, but I also understood that the concern that was manufacturing it was just a new concern, and was just about starting out in the business at that time, but who was concerned in it I didn't know at that time and don't know yet. 1088

Q. 23. Did you take the Rem-Sho typewriter on trial before you purchased it?

A. I think we did.

*Cross-Examination by Mr. Donnelly.*

X-Q. 24. Please state who prepared the written guaranty marked "Defendant's Exhibit Robbins & Kunkle Agreement with Howe Scale Company, May 12, 1898." 1089

A. I dictated it to our stenographer.

X-Q. 25. I presume that Mr. Scorer explained to you that the Rem-Sho was an abbreviation for the name "Remington-Sholes;" is that correct?

A. Yes, sir.

X-Q. 26. Did you have all the conversation with Mr. Scorer relating to the purchase of the so-called Rem-Sho machine, or did he have some conversation in reference thereto with your partner, or with your stenographer and typewriter?

A. He may have talked with my partner, Mr. Rob-

1090 bins, and may have talked to the stenographer, but I don't think anything was said to them particularly in relation to the contract more than to make some explanation to them as to the points of the machine. The contract was made with myself.

X-Q. 27. I presume that testifying from memory, as I understand you to do, you would not now undertake to say just all Mr. Scorer said about this so-called Rem-Sho machine, or its origin or by whom manufactured; is that correct?

A. I surely wouldn't attempt to tell you all he said —I am just giving you the substance of the conversa-
1091 tion.

X-Q. 28. Do you now recall the fact that he made any statement to you to the effect that the Remington-Sholes machine, or Rem-Sho machine, was made by a concern that had a Remington associated with it?

A. I understood from him that there was a person who had been connected with the manufacture of the Remington machine that was interested in the manufacture of the Rem-Sho, but whether his name was Remington or not I do not recall; my recollection, however, is that that was the name he gave, but at that time this
1092 person had severed his connection with the Remington people entirely.

X-Q. 29. I notice on this written guaranty which you prepared an extension thereof. Why was such extension made or given?

A. In order that I may answer that question, I will state that last spring our machine needed repairing and overhauling, and we had some difficulty in reaching the people who were to carry out this guaranty in the way of making repairs that should have been done by them under this agreemnt, and finally we did send the machine to Pittsburg, and it seems it fell into the hands of some other person—I don't remember who—who did

some work on the machine and sent it out to Greensburg 1093
with the bill attached marked C. O. D. We were somewhat indignant that such bill should be sent, and I think we wrote to the company at Chicago; at least we afterwards heard from them complaining of this transaction, and they afterwards made this agreement with us to extend the time, I presume to let us know that they were still doing business and wanted to treat their customers in the proper way.

JNO. E. KUNKLE.

1094

WESTERN DISTRICT OF PENNSYLVANIA. }
UNITED STATES OF AMERICA, } ss.

And now, to wit, January 3rd, 1901, in pursuance of notice and agreement of counsel, the taking of the deposition of John E. Kunkle, Esq., in behalf of the defendant was proceeded with, the said witness having been duly cautioned, examined and sworn to testify the truth, the whole truth and nothing but the truth, his said deposition was reduced to typewriting by Mabel Breneman, a clerk by me for that purpose duly appointed, and his said deposition having been read over to him, was duly signed in my presence; that H. D. Donnelly, Esq., ap- 1095
peared on behalf of the complainant, and George P. Fisher, Jr., Esq., on behalf of the defendant; that said deposition was duly signed and sealed for transmission to the court for which the same was taken; and further, do certify that I am not of counsel for either of the parties to said suit, or in any manner interested in the result of the same.

In testimony whereof, witness my hand and seal this 3rd day of January, 1901.

H. D. GAMBLE,
Special Examiner.

[SEAL.]

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New York, January 5th, 1901. Met pursuant to adjournment. Present, counsel as before.

WILLIAM F. LEWIS, a witness produced on behalf of the defendant, having been first duly sworn, testifies as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, age, residence and occupation.

A. William F. Lewis; residence, 17 East 31st street, New York; bookkeeper and financial man for Page, Dennis & Company, 341 Broadway; age, fifty-five.

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Q. 2. How long have you been connected with the firm of Page, Dennis & Company?

A. Since November, 1896.

Q. 3. State, if you know, what relation the firm of Page, Dennis & Company bears to the Howe Scale Company.

A. We are sales agents for the Howe Scale Company, and have been for twenty-five years, I think. That is to say, not always under the same firm name, but Mr. Page individually has been connected with it in that capacity.

1098

Q. 4. Who comprise the firm of Page, Dennis & Company, and have comprised that firm since 1897?

A. William C. Page; no other members in the firm.

Q. 5. State during what period of time, Page, Dennis & Company, as agents for the Howe Scale Company, sold the Rem-Sho typewriter in the City of New York.

A. From December, 1897, to October 1, 1898.

Q. 6. Where was the store of Page, Dennis & Company at that time located?

A. 341 Broadway.

Q. 7. Did the firm of Page, Dennis & Company

have any connection or business relation regarding the sale of the Rem-Sho typewriter after October 1st, 1898? 1099

A. They did not.

Q. 8. Was the sale of the Rem-Sho typewriter carried on at the store of Page, Dennis & Company after the 1st of October, 1898?

A. It was carried on at that place until January 1st, 1899, by the Remington-Sholes Company, after which date they removed from our store, I think, to 319 Broadway.

Q. 9. I call your attention to three copies of the St. Augustine Daily Herald, designated as "Complainant's Exhibit St. Augustine Daily Herald No. 1;" "Complainant's Exhibit St. Augustine Daily Herald No. 2," and "Complainant's Exhibit St. Augustine Daily Herald No. 3," these several exhibits being under date of January 23, 1899, February 8, 1899, and February 10, 1899, and I ask you to state whether you have seen the advertisement beginning with the words "Remember the name," and ending with the name "William Carcaba, Agent, St. Augustine, Fla.," prior to the present time? 1100

A. I have not.

Q. 10. Has the firm of Page, Dennis & Company had any correspondence with William Carcaba, of St. Augustine, Fla., to your knowledge? 1101

A. They have not, to my knowledge.

Q. 11. Have you examined the letter-books or letter-files and records of the firm of Page, Dennis & Company for the purpose of ascertaining what correspondence, if any, was had with William Carcaba by Page, Dennis & Company?

A. I have examined the letter-books from September, 1898, to August, 1899, and find no copies of letters to this party, and no record of any dealings with Mr. Carcaba.

1102 Q. 12. Did the firm of Page, Dennis & Company ever approve of the advertisement appearing in the several copies of the St. Augustine Daily Herald, to your knowledge?

A. They did not.

Q. 13. If there had ever been such approval, would you or would you not have known of it?

Question objected to by complainant's counsel as incompetent and improper, because it calls for the conclusion or opinion of the witness.

A. I think I would.

1103 Q. 14. State what were your duties in the firm of Page, Dennis & Company from the fall of 1898 until March of 1899, and to what extent these duties gave you occasion to consider the correspondence of such firm.

A. My principal duties were the keeping of the books of the concern, and any transactions of financial nature would naturally come before me, and my confidential capacity kept me somewhat posted as regards the general business of the firm.

Q. 15. State, if you know, whether William Carcaba, of St. Augustine, Fla., ever called at the office of

1104 Page, Dennis & Company in this city.

A. Not to my knowledge.

Q. 16. Did the firm of Page, Dennis & Company ever appoint William Carcaba its agent for any purpose?

A. Not to my knowledge.

Q. 17. If I understand you correctly, the firm of Page, Dennis & Company has had nothing whatever to do with the Rem-Sho typewriter business since October 1st, 1898; is that correct?

A. They have not. We had transactions with the

Remington-Sholes Typewriter Company in the closing up of our connection, but nothing as regards regular business after the first of October, 1898; that was when the business was taken over by the Remington-Sholes Company. 1105

W. F. LEWIS.

Direct examination closed.

(Certificate in complainant's record.)

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## DEFENDANT'S SURREBUTTAL TESTIMONY

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict,
*Plaintiff,*
*against*
The Howe Scale Company of 1886,
*Defendant.*

1109 Testimony taken on behalf of the defendant, before John A. Shields, Esq., United States Commissioner in and for the United States Circuit Court for the Southern District of New York, and Special Examiner by consent, at his office in the Post Office Building, New York, N. Y., on Saturday, February 16, 1901, beginning at 10:30 o'clock A. M.

Appearances: H. D. Donnelly, Esq., for complainant; George P. FisherJr., Esq., for defendant.

JOSEPH E. PLATT, witness produced *de bene esse* in surrebuttal on behalf of defendant, being first duly sworn, deposes and says as follows, in answer to in-
1110 terrogatories on cross interrogatories propounded to him by counsel:

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, age, residence and occupation.

A. Joseph E. Platt; age, fifty-four; residence, Milford, Connecticut; my place of business is New Haven, Connecticut; occupation, selling typewriters and supplies.

Q. 2. What make of typewriter do you sell?

A. At the present time I sell various machines, new

machines, Manhattan, second-hand machines, various kinds. 1111

Q. 3. Are you the Joseph E. Platt who has heretofore testified in this cause as a witness on behalf of complainant?

A. Yes, sir.

Q. 4. At what address are you conducting your business in New Haven?

A. 27 Centre street.

Q. 5. How long have you been engaged in business at that address?

A. About five or six years, at that address.

Q. 6. You have heretofore testified, I believe, that you were at one time the New Haven agent for Wyckoff, Seamans & Benedict. Please state whether, during any part of your agency for the said concern, you conducted the business at 27 Centre street. 1112

A. Yes; I couldn't give you the exact time, though, but until I gave up the agency.

Q. 7. I call your attention to an order addressed to the Remington-Sholes Company, dated October 21, 1899, and specifying one No. 4 Rem-Sho typewriter, catalogues, etc., said order being signed Joseph E. Platt, and ask you to state whether you gave such order, and whether the signature at the bottom thereof was signed by you at or about the date of the order. 1113

A. Yes; I gave the order; that is my signature. About that date.

The order referred to by the witness is introduced in evidence and marked "Defendant's Exhibit Platt Order for Rem-Sho, February 16, 1901, J. A. S., Ex'r."

Q. 8. When did you receive the typewriting machine referred to in said order?

A. About a week later, I should judge.

1114 Q. 9. Did you order more than one Rem-Sho typewriter from the Remington-Sholes Company between September and the last of December, 1899?

A. I don't think so.

Q. 10. What did you do with that typewriter which you received from the Remington-Sholes Company after it reached you?

A. It was rented at various times.

Q. 11. How long was it rented?

A. Oh, probably a month or six weeks altogether.

Q. 12. What final disposition did you make of that typewriter?

1115 A. It went to a man by the name of Mr. Phillips.

Q. 13. State, if you know, where Mr. Phillips resided at that time, and what his business was.

A. He resided in Fair Haven; his place of business was with the New Haven Leader Company.

Q. 14. Did you send this machine to Mr. Phillips' residence in Fair Haven?

A. Yes, sir.

Q. 15. About when did you send the machine to Mr. Phillips' residence?

A. Somewhere, I should think, about the 1st of
1116 January; anywhere, I should think, from December 29th to January 1st or 2nd; about that time. The last of December or the first of January; December, 1899.

Q. 16. Do you know the initials of Mr. Phillips?

A. I don't remember his initials now; I don't recall them.

Q. 17. Do you recall on what street he lived in Fair Haven?

A. I did not take the machine there myself.

Q. 18. Did you ever give Mr. Phillips a bill or invoice for that Rem-Sho machine?

A. No, sir.

Q. 19. There has been marked for identification in this case as "Copy of Phillips Bill, S. C. O., Jan. 4, 1901," what is alleged to be a copy of an invoice or bill delivered to Mr. Phillips. I ask you to examine the said alleged copy and state whether you ever gave to Mr. Phillips or to anyone an invoice containing the matter appearing upon said alleged copy. 1117

Complainant's counsel objects to the question as immaterial and irrelevant and as incompetent, because the question is predicated upon a paper marked for identification which is not in evidence in this case, and which has nothing to do with the case until or unless it is offered in evidence. 1118

A. I never have.

Q. 20. The alleged copy of the invoice bears the date "N. Y. Nov. 12, 1899," and reads as follows:

"H. W. Phillips, To Remington Sholes Co. Dr. One Pica Hd. No. 4—1736.....$97.50
Cr. By Old Machine.....45.00

$52.50

"Receipted by J. E. A."

I ask you whether you ever gave such a bill or invoice to Mr. Phillips or anyone, and whether you receipted any such invoice? 1119

Same objection as the last.

A. I never did.

Q. 21. I call your attention to a Rem-Sho machine that has been offered in evidence and marked "Complainant's Exhibit Phillips' Rem-Sho Typewriter, S. C. O., Ex'r., Jan. 4, 1901," and ask you to state the serial number of such machine.

A. It is 5376.

Q. 22. How does the machine just shown you com-

1120 pare with the machine which you caused to be delivered to Mr. Phillips in Fair Haven?

A. About the same thing.

Q. 23. What was the model of the machine that you delivered to Mr. Phillips?

A. I delivered a No. 4 Rem-Sho.

Q. 24. Did you ever deliver more than one Rem-Sho machine to Mr. Phillips?

A. Only one.

Q. 25. The alleged copy of Phillips' bill shows a credit item of one old machine. I ask you whether in making the trade with Phillips you received an old ma-

1121 chine from him or not?

A. I did not receive any second-hand machine from him.

Q. 26. What cash, if any, was paid by Phillips for the Rem-Sho machine that you delivered to him?

A. There was no cash paid.

Q. 27. How long had you known Phillips before this Rem-Sho machine was delivered to him?

A. Two months.

Q. 28. Had he been in your store before?

A. Frequently.

1122 Q. 29. Where was the New Haven office of Wyckoff, Seamans & Benedict with respect to your office at that time—I mean in the fall of 1899?

A. Across the street; nearly opposite.

Q. 30. State the circumstances which led to your sending this Rem-Sho typewriter to Mr. Phillips' residence in Fair Haven.

A. Mr. Phillips talked of having a machine sent to his house at Fair Haven to use on work at his house, and the machine was sent there agreeable to his request.

Q. 31. Before you sent this machine to Mr. Phil-

lips' house did he explain to you why he wanted that machine and what he intended to do with it? 1123

A. He said he could trade it for a Remington machine.

Q. 32. Did Mr. Phillips prior to the time when you sent the Rem-Sho machine to his residence show any familiarity or express any familiarity with the Remington typewriter?

Question objected to as immaterial and irrelevant, as calling for the conclusion of the witness and for a conversation or interview between persons not parties to this suit, and as otherwise incompetent. 1024

A. He knew what the Remington was.

Q. 32. State fully what Mr. Phillips said to you in regard to the Remington typewriter at the time that he told you that he could trade it for a Remington machine.

Same objection as the last, and also as improper, because the question calls for hearsay evidence.

A. Mr. Phillips had evidently heard that the Remington people were anxious and willing to exchange and take out Rem-Sho machines, giving new Remingtons in exchange; that is to say, with a slight difference, if they could get it, but if not they were willing to exchange on an even basis, at least he told me that. 1125

Q. 33. And is that the reason that he gave you for his wanting to obtain the Rem-Sho machine which you afterwards sent him?

A. Well, he wanted to rent one and use one at his house, and he said he could exchange it for new Remington, that is, he said he had heard a certain offer had been made that way.

Q. 34. Did you explain the Rem-Sho machine to Phillips before you sent it to his residence, and did you

1126 say anything to him about who made it or where it was made?

A. I don't remember that I did; he knew the machine. He was familiar with them all.

Q. 35. Did he know that the Rem-Sho and Remington machines were competing machines, or did he say anything to you to show any such knowledge upon his part?

Same objection.

A. I don't know that he did, but I presume so.

Q. 36. What causes this presumption upon your
1127 part?

Same objection as the last.

A. Why, I don't know that it was necessary for him to ask that question about the machines; he was thoroughly posted on all machines.

Q. 37. Did you ever see Mr. Phillips in the store of Wyckoff, Seamans & Benedict, or talking with any of their employees?

A. I cannot say that I ever did; he was up and down the street fifty times a day and might have dropped in.

Q. 38. State, if you know, what Mr. Phillips did with the Rem-Sho machine which you delivered at his
1128 residence in Fair Haven.

A. I don't know; I presume he turned it over to the Remington people in exchange for a new machine.

Q. 39. What causes you to think that he did this; did you hear from him afterwards in the matter?

A. He said he had exchanged the machine for a new Remington No. 6.

Q. 40. State, if you know, what Phillips did with this new Remington No. 6 which he obtained in exchange for the Rem-Sho that you delivered to him.

A. He turned over the Remington No. 6 to me.

Q. 41. And what did you do with it?

A. I traded it for several other secondhand ma- 1129
chines.

Q. 42. Where do you find the serial number of the Rem-Sho No. 4 machine which you delivered to Mr. Phillips?

A. It is at the bottom of the right-hand front post of the machine, beneath the rubber foot.

Q. 43. I show you "Complainant's Exhibit Phillips Letter, S. C. O., Spc. Exr., Jan. 4, 1901," and ask you to state whether you have ever seen such letter before or whether you have ever seen any writing containing the substance of such letter.

A. I never saw anything of the kind. 1130

Q. 44. Have you any knowledge about such letter having been written?

A. No, sir.

Q. 45. Do you know why that letter was written?

A. I do not.

Q. 46. Did you ever have in your employ a man by the name of George R. Bradley?

A. Yes, sir.

Q. 47. Is he the young man who has been present during the taking of your testimony up to this time, and who has just left the room at my request? 1131

A. Yes, sir.

Q. 48. When was Mr. Bradley in your employ?

A. In 1899; he left my employ about January 1st, 1900.

Q. 49. Whose employ did he enter after leaving your employ?

A. Wyckoff, Seamans & Benedict.

Q. 50. Did you ever see Mr. Bradley in conversation with Mr. Phillips prior to the time that you delivered the Rem-Sho machine to Phillips' residence in Fair Haven?

A. Yes, sir.

1132 Q. 51. How frequently?

A. Nearly every day.

Q. 52. Did you hear them talking about this Rem-Sho machine that you delivered to Phillips?

Complainant's counsel objects to the question as improper, because it calls for hearsay evidence, conversation between third parties, and as secondary evidence and not the best evidence.

A. Perhaps in a general way; he knew about it.

Q. 53. Where is Mr. Bradley now employed?

A. In the New Haven office of Wyckoff, Seamans
1133 & Benedict.

Q. 54. You have stated that the Rem-Sho machine which you ordered from the Remington-Sholes Company, as per "Defendant's Exhibit Platt Order for Rem-Sho," was delivered to Phillips the last of December, 1899, or about January 1st, 1900. How are you able to fix this date?

A. Well, the machine was bought on sixty days' time, and I know about the time that the machine was to be paid for. I had had it for about two months.

*Cross-Examination by Mr. Donnelly.*

1134 X-Q. 55. Was this Remington-Sholes No. 4 machine purchased by you of the Remington-Sholes Company for any particular person, or was it obtained by you at the time of the order simply for the purpose of keeping or having such a machine in stock or on hand?

A. It was purchased for no particular person. I simply bought it because it was sold me at a reasonable figure, and good property to sell, exchange or trade.

X-Q. 56. Were all of the said Remington-Sholes Nd. 4 model machines in structure and mode of operation and finish alike?

The question is objected to as not proper cross- 1135
examination.

A. This is the general style of the machine that I purchased. I don't know whether they have any different models or not.

X-Q. 57. Had you ever purchased a No. 4 Remington-Sholes typewriter or sold such typewriters before you gave the order dated October 21, 1899?

A. Well, I sold various numbers, twos and threes and fours, I think. Two was the ordinary number that we sold generally. Sometimes we sold special machines of other numbers.

X-Q. 58. I notice on the "Defendant's Exhibit 1136
Platt Order Rem-Sho" in the column of price what appears to be $55. Was that the amount which you paid for said No. 4 Rem-Sho typewriter?

A. I think so.

X-Q. 59. What do the figures 60 mean opposite the words "Terms net 60"?

A. It means sixty days in which to pay for that particular machine.

X-Q. 60. Was the amount specified in this order, that is to say, $55, the sum which you generally paid for a so-called Rem-Sho typewriter at the time you sold it? 1137

A. About that price.

X-Q. 61. At what price did you sell the said Rem-Sho No. 4 machine to Phillips, at the time above mentioned?

A. He inquired about the price several times, and I told him that he could have the machine if he bought it, inasmuch as it had been rented and used somewhat, for about $65 or $70.

X-Q. 62. I understand your testimony to be that Phillips paid for this Rem-Sho typewriter by turning in to you a No. 6 Remington; is that the fact?

A. Yes.

1138 X-Q. 63. Was there any money or anything turned over to Phillips at the time of this exchange or adjustment?

A. No.

X-Q. 64. Have you any means of knowing whether this Rem-Sho machine which you turned over to Phillips was the only machine of that number which you had in your possession between Nov. 1, 1899, and Jan. 1st, 1900?

A. That is the only machine I had of that description.

1139 X-Q. 65. Were the Rem-Sho machines, when they were billed to customers, billed at $97.50?

A. Sometimes they were.

X-Q. 66. When you sold the Rem-Sho typewriter, about what prices did you sell them?

A. I sold usually at the standard price, $100, machine and cover. That is, $97.50 for the machine and $2.50 for the cover.

X-Q. 67. From your testimony I infer that you have no means of fixing the precise date when you delivered the No. 4 Rem-Sho typewriter, so called, to Mr. Phillips?

1140 A. I know approximately. I have not the means here of fixing the date precisely.

*Redirect Examination by Mr. Fisher.*

R-D. Q. 68. In your answer to X-Q. 62 you have stated that Phillips paid for the Rem-Sho machine that you delivered to him by turning in to you a No. 6 Remington. State whether such No. 6 Remington was a new or secondhand one, and when Phillips turned it in to you.

A. It was an entirely new No. 6 machine. I should think he turned it in to me about the first week in January; I could not give the exact date.

R-D. Q. 69. But, if I understand your testimony correctly, Phillips did not turn in any secondhand machine at the time that you delivered the Rem-Sho machine to him or until after he had made the exchange with Wyckoff, Seamans & Benedict; is that correct? 1141

A. Yes, sir.

JOSEPH E. PLATT.

GEORGE R. BRADLEY, a witness produced *de bene esse* in surrebuttal, on behalf of defendant, deposes and says as follows, in answer to interrogatories propounded to him by counsel: 1142

*Direct Examination by Mr. Fisher.*

Q. 1. State your name, age, residence and occupation.

A. George R. Bradley; twenty-one years; New Haven, Connecticut; typewriter salesman.

Q. 2. For whom are you employed as a typewriter salesman and where?

A. I am employed by Wyckoff, Seamans & Benedict at their New Haven office.

Q. 3. Were you ever employed by Mr. Joseph E. Platt, of New Haven, and, if so, when did you leave his employ? 1143

A. I was employed for some time with Mr. Platt, and left him, to the best of my recollection, January, 1900, or it might have been the first of February; a little over a year ago.

Q. 4. Did you ever meet a man by the name of H. W. Phillips?

A. Yes, sir.

Q. 5. State when and where you first met Mr. Phillips.

A. I met Mr. Phillips at Mr. Platt's office in New

1144 Haven, some time during the year 1899, the early part of 1899.

Q. 6. How often did you see Mr. Phillips in Mr. Platt's office?

A. I saw him quite often; he was an advertising solicitor and passed the office frequently.

Q. 7. Did you see Mr. Phillips in Mr. Platt's office along in November or December of 1899?

A. I couldn't say positively; I think I did.

Q. 8. While employed by Mr. Platt you acted as salesman, did you not?

A. I was not a salesman, strictly speaking.

1145 Q. 9. Did you ever have any conversation with Mr. Phillips in regard to a Rem-Sho typewriter?

A. No, sir. I had some conversation with him at his house, but was confined to showing him how to put the paper, in the operation of the machine. It was at the time when I delivered the machine at his residence in Fair Haven.

Q. 10. Did you never have any talk with Mr. Phillips in regard to typewriting machines or in which the subject of typewriting machines was mentioned prior to the time when you delivered the Rem-Sho typewriter at Mr. Phillips' residence?

1146

The question is objected to by complainant's counsel as immaterial and irrelevant, and as calling for hearsay evidence.

A. I remember three distinct occasions of speaking to Mr. Phillips in regard to typewriters; they were when he first came to New Haven, and two of the conversations were in regard to an old Brooks typewriter which I repaired for him. At a later date I tried to sell him, while he was in Mr. Platt's office, a Manhattan typewriter.

Q. 11. State, if you recall, when the conversation

occurred with Mr. Phillips with regard to repairing an 1147
old Brooks typewriter.

A. It was in the early part of the year; the first time I ever saw the man.

Q. 12. Was Mr. Platt acting as the agent for the Manhattan typewriter during the year 1899?

A. He was.

Q. 13. Did you have no conversation with Mr. Phillips in regard to the Rem-Sho typewriter prior to the time when you delivered such typewriter at his residence in Fair Haven?

A. No, sir.

Q. 14. Did you give Mr. Phillips any bill or in- 1148
voice for the Rem-Sho typewriter?

A. No, sir.

Q. 15. Did you ever see any such bill or invoice in his possession?

A. No.

Q. 16. At the time you called at Mr. Phillips' residence in Fair Haven, did you see any other typewriting machine in his residence?

A. No, I did not.

Q. 17. Did you explain to Mr. Phillips any points of advantage of the Rem-Sho typewriter over other type- 1149
writers?

A. No, I did not.

Q. 18. Did Mr. Phillips pay you any cash for the Rem-Sho typewriter that you delivered to his residence?

A. No, he did not.

Q. 19. Did he give you any old machine in exchange for such Rem-Sho typewriter?

A. No, he did not.

Q. 20. Did you have any talk with him about his paying cash or giving an old machine in exchange for such Rem-Sho typewriter?

1150 A. No, he made all his arrangements with regard to this machine with Mr. Platt. It seems to me, as I remember the matter, Phillips rented the machine which I delivered him, and I think that Mr. Platt was going to do some advertising with him, but I am not at all certain on that point.

Q. 21. Have you read any of the evidence that has been given in this cause or talked to any one in regard thereto?

A. I have not read any of the evidence, but have spoken with Mr. Platt on the train this morning in a general way.

1151 Q. 22. Have you talked with any one else in regard to such matter?

A. I have spoken with several people about it. I spoke to a gentleman in New Haven yesterday.

Q. 23. Who was that gentleman?

A. Mr. Baldwin; I think the gentleman who served me with a subpœna.

Q. 24. Did you ever talk with Mr. Newton about it?

A. Yes, I spoke to him over the telephone last night. It was necessary for me to report to him I was to be in

1152 New York this morning.

Q. 25. Have you had any conversation with Mr. Newton or with any one else connected with Wyckoff, Seamans & Benedict in regard to the testimony that has been given in this cause, or any part of it, or in regard to the Phillips transaction, or Mr. Phillips?

A. No, I have not.

Q. 26. Did you ever obtain from Mr. Phillips a new No. 6 Remington?

A. No, I did not.

Q. 27. Do you know what Mr. Phillips did with the Rem-Sho machine that you delivered at his residence?

A. Beyond what I have heard Mr. Platt testify this morning, I have heard nothing. 1153

Q. 28. Do you recall Mr. Platts receiving a typewriter—I mean a Rem-Sho typewriter—from the Remington-Sholes Company at Chicago along in the early part of November, 1899?

A. I recall such a machine being received by Mr. Platt, as I believe, for the purpose of examination; whether Mr. Platt bought that machine or not I do not know.

Q. 29. Do you recall anything about the length of time that machine was rented or in Mr. Platt's office?

A. It seems to me it was there several months, because I remember it being rented to different people. 1154

Q. 30. How long was it rented, do you think, before you delivered it to Mr. Phillips?

A. Why, several months; I should say a couple of months.

Q. 31. Did you ever see in Mr. Phillips' possession or in the possession of any one, prior to to-day, any bill or invoice for the Rem-Sho typewriter that you delivered to Mr. Phillips?

A. I never saw it.

Q. 34. I call your attention to "Complainant's Exhibit Phillips Letter, S. C. O., Jan. 4, 1901," and ask you to state whether you have ever seen such letter before or whether you have ever seen any written matter containing the substance of such letter. 1155

A. No, I have never seen that letter before nor anything like it.

Q. 35. Did you ever have any conversation with Mr. Phillips in regard to the disposition he was going to make of the Rem-Sho machine?

A. No, sir.

Q. 36. Did you ever have any conversation with any

1156 one in regard to Phillips writing a letter to the New Haven office of Wyckoff, Seamans & Benedict?

A. No, sir.

Q. 37. When did you last see Mr. Phillips?

A. I met him on a train between Bridgeport and New Haven. I saw him last in a tailor shop in New Haven; I think it was about February, 1900. I think it was about that time.

Q. 38. If I understand you correctly, you have said that Mr. Phillips' business was soliciting advertisements for some newspaper?

A. For some newspaper, yes, sir.

1157 Q. 39. And he came into Mr. Platt's office at various times prior to the time the Rem-Sho machine was delivered to him in the course of his business of soliciting advertisements; is that correct?

A. Yes.

Q. 40. Was Phillips a solicitor of advertisements when you first met him?

A. Yes.

Q. 41. In the fall of 1899 the New Haven office of Wyckoff, Seamans & Benedict was directly opposite that of Mr. Platt, was it not?

1158 A. Not directly, but diagonally.

Q. 42. And I suppose the New Haven office of Wyckoff, Seamans & Benedict had the usual signs announcing their business?

A. It had, yes.

Q. 43. Do you recall what those signs were and about how large?

A. There was a sign about 5 by 4 feet, a swing sign, in front of the store, at right angles to the line of the building, having on it Remington Standard Typewriter, and beneath that the firm name, Wyckoff, Seamans & Benedict; the windows were decorated with our large

red seal, which is, I believe, the trade-mark. That is all I recall in the way of signs. 1159

Q. 44. Did you ever see Mr. Phillips in the store of Wyckoff, Seamans & Benedict?

A. Yes, he came in the store at my invitation; I wanted to show him one of our machines; this was after I left Mr. Platt's employment.

Q. 45. How long was it after you left Mr. Platt's employ?

A. It was immediately after; I should say two days.

Q. 46. Had you never seen him in the store of Wyckoff, Seamans & Benedict before that?

A. Never before, to my knowledge. He came in then because I knew he was interested in typewriters. 1160

Q. 47. Prior to that time, had you seen Mr. Phillips talking with any one connected with Wyckoff, Seamans & Benedict?

A. No, sir.

Q. 48. Did you ever have any correspondence with Mr. Phillips?

A. No, sir.

Q. 49. Were you ever at Mr. Phillips' on more than one occasion?

A. No, sir.

Q. 50. Do you know anything in regard to Mr. Phillips having exchanged the Rem-Sho typewriter that you delivered to him for a new No. 6 Remington? 1161

A. No, sir.

Q. 51. What other salesmen were connected with Mr. Platt, or what other employees were there in his office between November 1st and December 31st, 1899?

A. There were no regular employees; there were several shorthand pupils of his who were about there more or less.

Q. 52. Did you ever deliver to Mr. Phillips' resi-

1162 dence any other typewriter than the Rem-Sho you have mentioned?

A. No, sir.

Q. 53. Did you ever talk with Mr. Phillips in regard to the Remington typewriter, other than at the time when he called at the store of Wyckoff, Seamans & Benedict?

A. No.

Q. 54. If I understand your testimony correctly, all the negotiations with regard to the Rem-Sho typewriter which you delivered at Mr. Phillips' residence were had between Mr. Phillips and Mr. Platt; is that it?

1163 A. That is it exactly. I disliked the Rem-Sho typewriter myself, and devoted my energies to the Manhattan.

GEORGE R. BRADLEY.

*The President of the United States of America, to Joseph E. Platt and George R. Bradley, Greeting:*

We command you, that all and singular business and excuses being laid aside, you and each of you be and appear in your proper persons, before 1164 John A. Shields, Clerk U. S. Circuit Court and U. S. Commissioner, appointed by the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, at his office, Room 78 Postoffice Building, in the Borough of Manhattan, in the City of New York, in the said Southern District of New York, on the 16th day of February, one thousand nine hundred and one, at eleven o'clock in the forenoon of the same day, to testify all and singular what you and each of you may know in a certain cause now pending undetermined in the Circuit Court of the United States for the District of Vermont,

wherein Wyckoff, Seamans & Benedict is complainant 1165
and the Howe Scale Company of 1886 is the defendant, on the part of the defendant. And this you or either of you are not to omit under the penalty upon each and every of you of *Two Hundred and Fifty Dollars.*

Witness, Hon. Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, the 15th day of February, in the year of our Lord one thousand nine hundred and one.

JOHN A. SHIELDS,
Clerk.

1166

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict,
*Plaintiff.*
*vs.*
The Howe Scale Company of 1886,
*Defendant.*

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK. } ss.

I, John A. Shields, United States Commissioner for 1167
the Southern District of New York, and Special Examiner by consent, do hereby certify that on the 16th day of February, 1901, at my office in the Postoffice Building in the City of New York, I was attended by H. D. Donnelly, Esq., of counsel for the complainant, and George P. Fisher, Jr., Esq., of counsel for the defendant, and by the witnesses Joseph E. Platt and George R. Bradley; that the said witnesses were by me first duly examined and cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the above-entitled cause, and gave their depositions which, by con-

1168 sent of counsel for the respective parties, was taken down in the presence of the witnesses, and from their statements, by a typewriter appointed by me for that purpose, and the depositions having been read over to the respective witnesses they severally subscribed and swore to the same in my presence.

I further certify that the witnesses are necessary and material in the cause in the caption of the said deposition named, and that they live at a greater distance than one hundred miles from the place of trial of the within-entitled cause.

1169 I further certify that the said depositions were taken before me by consent of counsel for the respective parties.

And I do further certify that I am not of counsel nor attorney for either of said parties, nor in anywise interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto subscribed my name and affixed my seal, this twenty-sixth day of February, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-fifth.

JOHN A. SHIELDS,

1170 [SEAL.] U. S. Commissioner, S. D. of N. Y.

1171

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict
*vs.*
The Howe Scale Company of 1886. } In Equity.

Testimony in surrebuttal taken on behalf of defendant by consent of parties and under stipulation of counsel, before Alberta Adamick, a Notary Public in and for the County of Cook and State of Illinois, acting as Special Examiner by consent and stipulation, at the office of Peirce & Fisher, No. 115 Monroe street, Chicago, Illinois, beginning on the 5th day of February, A. D., 1901, at 2 o'clock P. M.

1172

Appearances: Josiah McRoberts, Esq., for complainant; George P. Fisher, Jr., Esp., for defendant.

CHARLES E. BATES, of lawful age, a witness produced on behalf of defendant, after being duly cautioned and sworn to testify the whole truth, did testify as follows:

*Direct Examination by Mr. Fisher.*

Q. 1. Please state your name, age, residence and occupation.

1173

A. Charles E. Bates; forty; St. Joseph, Missouri; bicycle business and sporting goods.

Q. 2. Under what name are you engaged in business at St. Joseph, Missouri?

A. Diamond Supply Company.

Q. 3. How long have you been engaged in business at St. Joseph, trading under the name of the Diamond Supply Company?

A. Five years.

Q. 4. With whom have you been connected in business during the past five years or any part thereof?

1174 A. Mr. F. G. Pennewill previous to the first of last month. Since January first I have been in business alone.

Q. 5. Did you and Mr. Pennewill trade under the name of the Diamond Supply Company while you were in partnership?

A. We did, during the whole period of our partnership.

Q. 6. Do you know where the office for the sale of the Remington Standard typewriter is located in the City of St. Joseph?

A. I do; it is about seven blocks from where we are
1175 located.

Q. 7. Did you and Mr. Pennewill, while trading under the name of the Diamond Supply Company, ever have any business connection with the Remington-Sholes Company of Chicago?

A. We did.

Q. 8. For what purpose?

A. For the purpose of selling Rem-Sho typewriters.

Q. 9. When did the Diamond Supply Company undertake the sale of the Rem-Sho typewriter?

A. Sometime about the first of March, 1899.

1176 Q. 10. I call your attention to "Defendant's Exhibit Diamond Supply Co. Contract," and ask you to state whether the Diamond Supply Company mentioned therein is the same concern as you have stated to have consisted of yourself and Mr. Pennewill prior to January 1st, 1901.

A. It is.

Q. 11. How long did the Diamond Supply Company maintain its connection with the Remington-Sholes Company with respect to the sale of Rem-Sho typewriters?

A. From March, 1899, until the middle of the summer of 1900.

Q. 12. How many typewriters did the Diamond Supply Company sell? 1177

Objected to as incompetent, irrelevant and immaterial.

A. We did not sell any.

Q. 13. Did your firm sell any?

Same objection.

A. We did not.

Q. 14. How many Rem-Sho typewriters did the Diamond Supply Company—and by this name I wish you also to understand yourself and Mr. Pennewill—purchase? 1178

Same objection as before, and further that this whole line of examination is improper and not proper surrebuttal, as the question of the agency and dealings of the Diamond Supply Company, Mr. Bates and Mr. Pennewill with the Remington-Sholes Company was brought out in complainant's *prima facie* case, and that this line of testimony should have been developed, if at all, in defendant's reply thereto.

A. We bought one.

Q. 15. Where has that Rem-Sho machine been since it was purchased from the Remington-Sholes Company? 1179

Same objection as the last.

A. It has been on exhibition in the salesroom of the Diamond Supply Company.

Q. 16. To what extent, if any, has such machine been used?

Same objection.

A. Mr. Pennewill has used it in connection with business, and he is still using it so.

Q. 17. Did the Diamond Supply Company use any

1180 printed matter in connection with its attempts to sell Rem-Sho typewriters?

Same objection as to question 14.

A. It did.

Q. 18. What was the character of such printed matter?

A. It was a catalogue of the Rem-Sho typewriter.

Q. 19. I call your attention to "Defendant's Exhibit Rem-Sho Catalogue Nos. 4 and 5," and ask you to state whether you have ever seen any catalogues like this before, and, if so, when and where.

1181 A. Yes, I have seen them; it is the same catalogue that we had.

Q. 20. State in what way the Diamond Supply Company used such catalogue.

Same objection to all this line of testimony as to question 14.

A. We gave them out to prospective purchasers who called to see the machine. We had half a dozen of them laying on the table by the typewriter. We had some others that we kept in the cabinet for that purpose.

Q. 21. You have stated in the course of your ex-
1182 amination that the Diamond Supply Company were dealers in bicycles. Please state what makes of bicycles the Diamond Supply Company dealt in or handled during the year 1899.

A. We handled the Olive, the Wolf-American, the Barnes White Flyer, the Remington and one or two others; those are the principal lines.

Q. 22. From whom did the Diamond Supply Company purchase or procure the Remington bicycle?

A. The Remington Arms Company, Ilion, New York.

Q. 23. When did the Diamond Supply Company be- 1183
gin to handle the Remington bicycle?

A. Some time in May, 1899.

Q. 24. When did the Diamond Supply Company receive the first Remington bicycle?

A. About May 20, 1899.

Q. 25. Did the Diamond Supply Company advertise the Remington bicycle in any way, and, if so, state how?

A. They did. We sent out hand bills, and also had a sign displayed in the window.

Q. 26. State when the sign advertising the Reming- 1184
ton bicycle was displayed in the window of the Diamond Supply Company, and state all the circumstances connected with the displaying of such sign.

A. The sign was displayed shortly after the receipt of the Remington wheel. The wheel came crated and enclosed in a large paper sack of reddish brown color. Across the sack in large black type letters was printed the word Remington. In taking the bicycle from the sack the sign was cut from the sack by myself and tacked in the window.

Such part of the answer as relates to the sack and the alleged printing thereon is objected to as 1185
mere secondary evidence.

Q. 27. What became of that sign which you say you cut from the sack that enclosed the Remington bicycle?

A. It was tacked up in the show window.

Q. 28. Where is that sign now?

A. It has been destroyed.

Q. 29. State, if you know, when and under what circumstances it was destroyed.

A. I could not state.

Q. 30. Have you made any search for said sign?

1186 A. I have, during the last two weeks. I was not able to find it.

Q. 31. What, if anything, was displayed in the store window of the Diamond Supply Company in conjunction with this sign bearing the name Remington?

A. The Remington bicycle.

Q. 32. Was there anything else displayed in the window besides the Remington bicycle during the time that this sign was in the window?

A. There was not.

Q. 33. Where was the Rem-Sho typewriter which you say the Diamond Supply Company had during the
1187 time this sign was displayed in the window?

A. It was on exhibition in the adjoining room.

Q. 34. Could the Rem-Sho typewriter be seen from the window in which this sign was displayed

The question is objected to as calling for the mere conclusion of the witness.

A. It could not.

Q. 35. Why not?

A. Well, because there was a brick wall between the window and the adjoining room.

1188 Q. 36. Was this sign put to any other use after its use in connection with the exhibition of the Remington bicycle in the window of the Diamond Supply Company?

A. It was. It was taken down and used as a sign advertising Fourth of July goods. We took the sign down and turned it over and printed on the other side "Fourth of July goods for sale here."

Q. 37. Was this sign ever used in any manner in connection with the Rem-Sho typewriter or was it ever placed in proximity to such typewriter?

A. It was not.

Q. 38. How long did the Diamond Supply Company 1189
continue to offer for sale the Remington bicycle?

A. During one season; in 1899.

Q. 39. How many Remington bicycles did the Diamond Supply Company sell?

Objected to as immaterial and irrelevant.

A. They sold one.

Q. 40. Prior to taking the dealership contract for the Rem-Sho typewriter, had the Diamond Supply Company had any negotiations with the Remington Arms Company with respect to the sale of the Remington bicycle? 1190

Same objection.

A. They had not.

Q. 41. Prior to such time, had the Diamond Supply Company contemplated handling the Remington bicycle?

Same objection.

A. They had not?

Q. 42. So far as you know, was the Remington-Sholes Company or any one connected with it ever advised or informed that the Diamond Supply Company was intending to handle or was handling the Remington 1191
bicycle?

Same objection.

A. They were not.

Q. 43. Did the Diamond Supply Company ever exhibit in its window any other sign bearing the name Remington except the sign which you say was exhibited there in connection with the Remington bicycle?

A. They did not.

Q. 44. Was the sign which bore the name Remington and which you say was exhibited in the window of the

1192 Diamond Supply Company ever exhibited in such window when the Remington bicycle was not also exhibited there?

A. It was not.

Q. 45. Who removed that sign from the window of the Diamond Supply Company?

A. I removed it and I also put it in the window.

Q. 46. Did the Diamond Supply Company ever have any agreement or arrangement with the Remington-Sholes Company in regard to the character of the signs or other advertisements that were to be used by the Diamond Supply Company in connection with the Rem-
1193 Sho typewriter?

Counsel for complainant objects to the question upon the ground that it is not proper surrebuttal, and also that it calls for mere secondary evidence.

A. They did not.

Q. 47. Did the Diamond Supply Company ever submit to the Remington-Sholes Company or any one connected with it any signs or other advertisements that the Diamond Supply Company contemplated using?

Objected to as not proper surrebuttal.

A. They did not.

1194

*Cross-Examination by Mr. McRoberts.*

X-Q. 48. The Remington-Sholes Company left the Diamond Supply Company free and untrammeled with respect to advertising the Remington-Sholes machine. Am I correct in my understanding of your testimony?

A. Well, they left us free and untrammeled in regard to advertising.

Q. 49. The Remington-Sholes Company simply furnished you a plate or electrotype from which the cut contained in "Complainant's Exhibit St. Joseph Sunday Herald, April 30, 1899," was made and permitted

you to compose whatever printed matter you desired to accompany the same? (Handing the witness the exhibit). 1195

A. They did.

X-Q. 50. With no restrictions as to the character or composition of the printed matter to accompany this cut?

A. None that I know of.

X-Q. 51. You would have known of them if there had been any?

A. Yes, sir.

X-Q. 52. What was the principal commodity dealt in by the Diamond Supply Company in 1899 and 1900? 1196

A. Bicycles.

X-Q. 53. What else?

A. Sporting goods.

X-Q. 54. Anything else?

A. That was the principal line.

X-Q. 55. How about Fleischman Brothers' Yeast?

A. It had no connection whatever with the Diamond Supply Company.

X-Q. 56. What connection did Mr. Pennewill have with Fleischman Brothers Yeast Company at that time?

A. He was their agent. 1197

X-Q. 57. And as such agent, where was his place of business in St. Joseph?

A. It was in the south half of the building No. 319 North Third street.

X-Q. 58. And the Diamond Supply Company was in the same building?

A. They occupied the other half of the same building; also No. 321 North Third, the adjoining building.

X-Q. 59. There was one street door for both numbers, 319 and 321 North Third street, wasn't there?

A. There was not.

1198 X-Q. 60. Did each store have a separate street door, that is, did No. 319 have one door and No. 321 have another?

A. They did; they both had separate doors.

X-Q. 61. There was no communication whatever between the two stores?

A. There was.

X-Q. 62. Just describe the appearance of the fronts of these stores while they were occupied by the Diamond Supply Company in 1899.

A. Well, there are two separate rooms connected by double doors; there was one show window on the south
1199 and one on the north of each building, making four windows in all, and the two rooms are separated by a brick wall, with a door for passage way between them.

X-Q. 63. The store No. 319 had a double street door and there was a window on each side of this double door?

A. There was.

X-Q. 63½. And Mr. Pennewill occupied the south half of building 319 and the Diamond Supply Company occupied the north half?

A. They did.

1900 X-Q. 64. What other business have you been engaged in than with the Diamond Supply Company during any time in 1898, 1899 and 1900?

A. Selling dry goods.

X-Q. 65. You have been a clerk for the Sampson Dry Goods Company of St. Joseph during that time, haven't you?

A. Yes, sir.

X-Q. 66. How long have you been employed by the Sampson Dry Goods Company as a clerk in its dry goods store?

A. I was employed there at different times covering a period of ten years.

X-Q. 67. Were you in the employ of the Sampson Dry Goods Company in 1899? 1201

A. I was.

X-Q. 68. And Mr. Pennewill, in addition to his duty as agent for Fleischman Brothers' Yeast Company, attended to the business of the Diamond Supply Company, did he not?

A. Not entirely; he looked after it and we had another man employed.

X-Q. 69. You did not devote your time and attention to the Diamond Supply Company?

A. Not all of it.

X-Q. 70. Did you devote any part of your time and attention to the business of the Diamond Supply Company during 1899 while you were a clerk for the Sampson Dry Goods Company? 1202

A. Yes, sir.

X-Q. 71. Did you give any of your time and attention during that year to the business of the Diamond Supply Company with relation to selling its goods?

A. Yes, sir.

X-Q. 72. How much of your time was so employed and when?

A. Four and five hours during the evening.

X-Q. 73. After you finished up your work at the Sampson Dry Goods Company store you would then devote some of your spare time in the evening to the affairs of the Diamond Supply Company? 1203

A. I devoted all of my time during the evening and other odd times selling wheels whenever I could.

X-Q. 74. But you have not been at the store of the Diamond Supply Company and were not there regularly during the day in the year 1899?

A. No, sir; I was not.

X-Q. 75. Did Mr. Pennewill carry on his business

1204 and correspondence and have his desk in the south half of store No. 319 during 1899?

A. Yes, sir; he did.

X-Q. 76. Did he have a desk or place of business where he regularly transacted business in any other part of that store or in store No. 321?

A. No, sir.

X-Q. 77. So that if he used the Remington-Sholes typewriter in connection with his business he did so in store No. 319?

A. He did so in room No. 319.

X-Q. 78. Whereabouts was his desk in that room?

1205 A. It was in the south half of the building separated from the other business partly by a counter and partly by a railing or fence.

X-Q. 79. Was his desk near the window?

A. It was not.

X-Q. 80. Where was it?

A. Behind the railing.

X-Q. 81. In the front or rear portion of the store?

A. About the center.

X-Q. 82. Did you do all of the unpacking of the goods that were received?

1206 A. No, sir.

X-Q. 83. What other bicycles did you unpack except the one you have termed the Remington bicycle?

A. I unpacked about a hundred during the season, or seventy-five.

X-Q. 84. They all came crated in pretty much the same general way, didn't they?

A. Yes, sir.

X-Q. 85. And all had paper around them?

A. As a general thing, they did.

X-Q. 86. And had their characteristic names displayed in different ways upon the wrappings and crates?

A. Some of them, and some of them did not.

X-Q. 87. When was that so-called Remington bi- 1207
cycle sold?

A. Well, I couldn't give you the exact date; it was sold some time during the spring of 1899.

X-Q. 88. When was it received?

A. About May 20, 1899.

X-Q. 89. Were any others received in that same consignment or at that time?

A. I think not.

X-Q. 90. Which window of store 319 was this bicycle displayed?

A. In neither window.

X-Q. 91. Do you recall that you ever unpacked an 1208
Olive bicycle?

A. Yes, sir.

X-Q. 92. When?

A. During the same season; I do not know the exact time.

X-Q. 93. Did you ever display an Olive bicycle in the windows of that store?

A. Yes, sir.

X-Q. 94. Fleischman's yeast signs were displayed in the south windows of store No. 319, weren't they?

A. They were. 1209

X-Q. 95. In which room was the Remington-Sholes typewriter displayed?

A. No. 319.

X-Q. 96. In that part of it occupied by the Diamond Supply Company?

A. Well, I don't know as you could say that it was the part occupied by the Diamond Supply Company; it was exhibited on a table in the south half of the room.

X-Q. 97. For all that you know, it may have been exhibited in room 321 at times?

A. It never was exhibited in room 321.

1210 X-Q. 98. Were you there all the time?

A. I was not there all the time, but would have known in regard to it if it had been.

X-Q. 99. So far as your knowledge is concerned, you cannot swear that it was not exhibited at times in room 321, can you?

A. I would be willing to swear to it.

X-Q. 100. Well, do you swear that that Remington-Sholes typewriting machine was never exhibited in room 321 occupied by the Diamond Supply Company?

A. I do.

X-Q. 101. The two stores were used in conjunction
1211 for the purposes of the Diamond Supply Company, were they not?

A. Yes, sir.

X-Q. 102. And you exhibited and advertised your wares in the windows of each of them, did you not?

A. Yes, sir.

X-Q. 103. Who arranged the window exhibitions?

A. Mr. Pennewill and myself both arranged them. Sometimes the one and sometimes the other.

X-Q. 104. How much of the time during May, 1899, were you present at the stores of the Diamond Supply
1212 Company during the day time, if at all?

A. I was there one hour during each day at noon.

X-Q. 105. When you went home to get your dinner from the Sampson Dry Goods Company, you lived up over 319, didn't you?

A. I lived in the rear of No. 319.

X-Q. 106. And it was while you went there for dinner at the noon hour that you were at the store of the Diamond Supply Company?

A. With the exception of the time it took to eat my dinner.

X-Q. 107. Did you unpack that Remington machine yourself? 1213

A. I did.

X-Q. 108. When?

A. One day at noon when I came home to dinner.

X-Q. 109. Anybody help you?

A. Not that I remember of.

X-Q. 110. Did you unpack all the bicycles that were received?

A. I did not.

X-Q. 110. Who did when you didn't?

A. Some were unpacked by Mr. Pennewill and some by a man that we had employed. 1214

X-Q. 111. You remember distinctly unpacking that Remington machine?

A. Yes, sir; I do.

X-Q. 112. It may not have been a Barnes' White Flyer that you unpacked that day?

A. It was not a Barnes' White Flyer.

X-Q. 113. Were bicycles ever displayed in the windows or either of them in store No. 319?

A. They were at times.

X-Q. 114. What time in May, 1899, was this sign containing the word Remington placed in the window of the Diamond Supply Company? 1215

A. During the month of May; it was in the latter part of the month.

X-Q. 115. And at that time the Remington-Sholes typewriter was displayed in the store of the Diamond Supply Company, was it not?

A. The Remington-Sholes typewriter was displayed by the Diamond Supply Company in the adjoining room, No. 321.

X-Q. 116. In which room was the Remington bicycle displayed?

A. In 321.

1216 X-Q. 117. And the sign containing the word Remington was also displayed in the window of room 321 at that time, was it not?

A. It was.

X-Q. 118. The sign containing the word Remington was displayed by the Diamond Supply Company while it had the dealership for the Remington-Sholes typewriter, was it not?

A. It was.

X-Q. 119. Do you know whether the Remington bicycle had ever been sold or offered for sale in St. Joseph prior to the time that the Diamond Supply Company began to handle it in May, 1899?

1217

A. Yes, sir.

X-Q. 120. To what extent, if you know?

A. I do not know.

X-Q. 121. Had it been advertised and was it popularly known among bicycle riders or generally known among them?

The question is objected to as improper, irrelevant and not proper cross-examination.

A. Not to any great extent.

X-Q. 122. Prior to that time do you know whether or not the Remington typewriter was pretty generally known in St. Joseph, Missouri?

1218

A. I think it was pretty well known.

X-Q. 123. It was a well-known machine and one that was quite generally used, was it not, at that time?

A. I think so.

X-Q. 124. When you placed the sign containing the word Remington in the window of the Diamond Supply Company did it occur to you that that was the name by which the Remington typewriter was generally known?

A. It did not.

X-Q. 125. Was anything said by you to Mr. Pennewill or to your clerk when you put this sign in the window with respect to any suggestion that it might convey or any inference that might be drawn from it with respect to the type or character of typewriting machine that you were then offering for sale? 1219

A. There was nothing at all said in regard to the matter.

X-Q. 126. Nothing was said of any nature whatever in regard to this matter at any time while that sign was in the possession of the Diamond Supply Company; is that true?

A. That is true. 1220

X-Q. 127. Was any hint ever made by any of you in this respect?

A. No hint was ever made.

X-Q. 128. No remarks of any kind?

A. No remarks.

X-Q. 129. Did any other person or persons ever say anything about the sign in this respect?

Question is objected to as immaterial, irrelevant and incompetent and not proper cross-examination.

A. Nothing was ever said to me in regard to it.

X-Q. 130. Was anything ever said to anybody connected with the Diamond Supply Company in regard to it? 1221

Same objection as the last.

A. Not to my knowledge.

X-Q. 131. Did Mr. Pennewill ever tell you or say anything to you about anybody having said anything to him about it?

Same objection as the last.

A. He never did.

1222 X-Q. 132. Did your clerk or assistant?

Same objection as the last.

A. He did not.

X-Q. 133. You swear positively to these facts, do you?

A. I do.

X-Q. 134. Did you ever hear any reference to this sign, and in the respect of which we have been speaking, by anybody whatever?

Same objection as the last.

A. I never did.

1223 X-Q. 135. Did anybody ever ask if the Diamond Supply Company sold or offered for sale the Remington typewriter?

A. They did not.

X-Q. 136. Did anybody ever ask you if the Diamond Supply Company had become the agent for the Remington typewriter or make any reference or allusion thereto?

The question is objected to as not proper cross-examination.

A. They did not.

1224 X-Q. 137. Did you ever hear of such inquiry being made?

A. I did not.

*Re-Direct Examination by Mr. Fisher.*

R-D. Q. 138. I call your attention and request you to read your answer to X-Q. 97, also your answer to X-Q. 100 and your answer to X-Q. 115, and ask you to state whether these answers have been correctly taken down by the typewriter, and if so, whether they are your answers to such questions.

A. The answer to X-Q. 115 should read as follows:

The Remington-Sholes typewriter was displayed by the Diamond Supply Company in the adjoining room to No. 321; that was the way I said it. 1225

R-D. Q. 139. What was the number of that room which you say was adjoining to room No. 321?

A. No. 319.

*Re-Cross Examination by Mr. McRoberts.*

R-X Q. 140. You mean, don't you, that whenever you saw the Remington-Sholes typewriting machine, it was displayed in the room adjoining No. 321?

A. It was always displayed there.

R-X Q. 141. When you saw it? 1226

A. When I saw it.

R-X Q. 142. And when you didn't see it, or when you were not at the Diamond Supply Company store, you have no personal knowledge of where it was displayed?

A. In changing the places for displaying the machine, I would have been consulted in regard to the matter, and would have known about it.

The notary is requested to reread the last question, and the witness is requested to answer it.

A. No. 1227

R-X Q. 143. And at such times or at some of such times it may have been displayed, for all that you know personally about it, in some other parts of the establishment of the Diamond Supply Company, may it not?

A. It is possible, but not probable.

R-X Q. 144. Then it is possible that at some time during the day when you were not at the store of the Diamond Supply Company that this Remington-Sholes typewriting machine was displayed somewhere about the premises of No. 321 North Third street?

A. It is possible, but not probable.

1228 R-X Q. 145. And it is possible that at some such time or times this Remington-Sholes typewriter may have been displayed in one of the windows of the store No. 321?

A. It is possible, but never to my knowledge.

R-X Q. 146. And it is possible that it may have been displayed in the windows of No. 321 nearly or quite every day, at such times as you were not there?

A. It would not be possible, unless I knew something in regard to it.

R-X Q. 147. The greater part of your time and attention during the months of May, June and July of 1899
1229 were given up to the business of your clerkship with the Sampson Dry Goods Company, was it not?

Counsel for defendant objects to the question as a mere repetition of questions that have been many times asked the witness on cross-examination and answerd by him fully, and as having no foundation in the re-direct examination of the witness.

A. The greater part of my time was given up to the Sampson Dry Goods Company during the day time.

Examination closed.

CHAS. E. BATES.

1230

1231

February 21, 1901. Met pursuant to adjournment. Present: George P. Fisher, Jr., counsel for defendant; Josiah McRoberts, Esq., counsel for complainant.

FRED W. PAYNE, a witness produced *de bene esse* on behalf of defendant, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

Q. 1. State your name, age, residence and occupation.

1232 A. Fred W. Payne; age, twenty-three; 67 Florence avenue; clerk for Remington-Sholes Company.

Q. 2. What are your duties with the Remington-Sholes Company and where are they performed?

A. My duties at the present time is the classification of all parts which make up the Rem-Sho typewriter.

Q. 3. What were your duties with the Remington-Sholes Company during the year 1899?

A. Billing and entry clerk and in charge of the shipping department.

Q. 4. There has been introduced as evidence in this cause a typewriting machine marked "Complainant's Exhibit Phillips' Rem-Sho Typewriter, S. C. O., Exr., 1233 Jan. 4, 1901," said typewriter bearing the serial number 5376. I ask you to state, if you are able to do so, whether a Rem-Sho typewriter, No. 5376, was shipped by the Remington-Sholes Company while you were acting as billing clerk, and if so, when said shipment was made and to whom?

Objected to as incompetent and immaterial, and as calling for secondary evidence.

A. Machine 5376 we shipped November 3rd, 1899, to Joseph E. Platt, New Haven, Connecticut.

1234 Q. 5. How are you able to state that such machine was shipped at such date to Mr. Platt?

A. Through the records that are now in possession of the Remington-Sholes Company.

Same objection, as the records themselves are the best evidence.

Q. 6. Who kept such records at the time said machine was shipped?

A. Shipping clerk.

Q. 7. When did you examine said record?

A. To-day.

1235 Q. 8. Who was the shipping clerk by whom the entries were made in such record during the fall of 1899?

A. I was the shipping clerk and made such entries.

Q. 9. Can you state whether you made the entry in said record at that time with respect to Rem-Sho machine No. 5376?

A. Yes, sir; I did.

Q. 10. Can you state whether or not more than one Rem-Sho typewriter was shipped to Joseph E. Platt by the Remington-Sholes Company during the year 1899?

Same objection.

1236 A. That was the only machine shipped direct from the factory.

Q. 11. Have you made any examination of the records of the Remington-Sholes Company for the purpose of determining whether a Rem-Sho typewriter, No. 1736, was shipped from said factory and what model of machine bore such number?

Question is objected to as being incompetent, immaterial and as calling for secondary evidence both with respect to the company records and the machine in question.

A. Machine No. 1736 is a No. 3 model machine, and the same has been shipped. 1237

Q. 12. Can you state where such machine was shipped and about when?

A. This machine was shipped to Berlin, Germany, in December, 1898.

Same objection.

Q. 13. Aside from the information afforded you by your examination of the records of the Remington-Sholes Company, state what recollection you have in regard to shipping a Rem-Sho typewriter to Mr. Joseph E. Platt during the year 1899. 1238

Objected to as incompetent, immaterial and irrelevant.

A. I remember seeing the order that was sent in from which I made our shipping order. Mr. H. J. Hitchcock sent the order in.

Q. 14. Have you with you here the original record book of the Remington-Sholes Company referred to in your previous answers and in which you have stated that an entry was made by you with respect to a machine shipped to Joseph E. Platt at New Haven, Connecticut, November 3, 1899? 1239

A. Yes.

Q. 15. Please turn to the page of said record book containing the entry with respect to Rem-Sho typewriter No. 5376, and state whether or not said entry is in your handwriting.

A. I have turned to the page on which the Platt entry is on and find the same in my handwriting.

Q. 16. State when this entry was made by you and whether or not it was made in the regular course of your duties.

A. This entry was made on the day of the shipment,

1240 November 3rd, 1899, and is in accordance with the regular course of my duty.

It is stipulated between counsel that the Notary may make a copy from said record book of the entry referred to by said witness, and that said copy may be received in evidence with the same force and effect as the original, the Notary being instructed to underscore such parts of said entry as are printed as distinguished from such parts as are in the handwriting of the witness. The copy made by the Notary is as follows:

1241 *R.-S. Co. G. O. Form 191. 3M. 11-98*

*M* Jos. E. Platt *Chicago,* Nov. 3rd, *1899*
New Haven
Conn

*To REMINGTON-SHOLES COMPANY, Dr.*

*Your Order* 10/21
*Our Order* 9147 *127 Rees St., Chicago.*
*Shipped Via* Star Union
*Terms* 5% 10 Days

| *For Purchase as Below* | *Machine Parts* | *Merchandise* | *Total.* |
|---|---|---|---|
| To 1 #4 Rem-Sho Machine | | 55.00 | |
| " 1 Cover and Baseboard | | 2.50 | |
| | | | $57.50 |

1242

P—#5376.

*Invoice No. 2546. Refer to invoice by number.*

I hereby certify that the above is a true copy.

ALBERTA ADAMICK,
Notary Public and Special Examiner
by consent.

Q. 17. I notice upon said entry the letter "P" preceding the number 5376. Please state what said letter "P" means or indicates.

A. "P" is an abbreviation for pica, the style of type 1243
which is in the machine.

Q. 18. Can you produce any written acknowledgement showing the receipt of Joseph E. Platt of the typewriting machine that was shipped to him by the Remington-Sholes Company on November 3, 1899?

A. I can; here it is.

Q. 19. State whether or not you are familiar with the signature of Joseph E. Platt, whose name appears upon the bottom of the letter you have just produced, and whether you recognize such signature as Mr. Platt's.

A. I recognize the signature to be that of Mr. Platt's 1244
from seeing it upon other correspondence.

The letter referred to by witness is offered in evidence, and the same is marked "Defendant's Exhibit Platt Acknowledgement of Rem-Sho Machine."

Q. 20. Where is the serial number to be found on Rem-Sho machines of the No. 4 model?

A. Under the front rubber foot on the right-hand side of the machine.

*Cross-Examination by Mr. McRoberts.*

X-Q. 21. Was the machine sent to Mr. Platt and 1245
billed at $55.00 a new machine, or was it a second-handed machine?

A. This machine was new when shipped to Mr. Platt.

X-Q. 22. Was this the average price of new machines?

The question is objected to as immaterial, irrelevant, and not proper cross-examination.

A. I can't say that it is up to the average.

X-Q. 23. But it is approximately the average?

Same objection.

A. No, sir; I can't say that.

1246 X-Q. 24. Between $55.00 and $60.00 is the average price?

Same objection.

A. I would say $60.00 is the average.

X-Q. 25. That is to purchasers?

A. No, sir; to dealers.

X-Q. 26. I observe in the billing book which you have just identified a machine billed to Hanna & Lay Merchantile Company, Traverse City, Michigan, being "1 No. 4 Rem-Sho machine, $60.00," and another to Christianson & Thorney, of Racine, Wisconsin, "1 No.
1247 4 Rem-Sho machine at $60.00," and on the next page to Bryant E. Wade, Rockford, Illinois, "two No. 4 Rem-Sho machines, at $60.00 each;" were these parties agents or were they purchasers?

Same objection as last, and the question is further objected to as the witness is not shown qualified to testify as to who were agents.

A. I would consider them as dealers.

X-Q. 27. Do you know whether they were dealers in typewriting machines or whether they purchased these machines for their own use?

1248 Same objection as last.

A. These parties I would consider as dealers for the Rem-Sho typewriter.

X-Q. 28. Do you know whether they were dealers or not, as a matter of fact?

Same objection as last.

A. I can not say that they were dealers for sure, as I am unable to tell, but I would consider them as dealers.

X-Q. 29. Do you know of your own knowledge whether these parties bought these machines for their own use or for the purpose of sale or rental to others?

Same objection as last.

1249

A. For sale and rental to others.

X-Q. 30. What was the average price of machines billed by you to purchasers who bought for their own use?

Same objection as last, and the question is further objected to as it has not appeared that the duties of this witness as billing and shipping clerk were such as to enable him to know certainly who were dealers or individual users, and for the further reason that the witness having been called to testify to a single point as to the shipment of a machine to Joseph E. Platt, the question asked the 1250
witness manifestly has nothing whatever to do with the matter of his examination.

A. Machines sold to purchasers intending to use the machine for their own use were billed either by our offices or dealers.

FRED W. PAYNE.

Adjourned until 9:30 A. M., Friday, February 22, 1901.

February 22, 1901. Met pursuant to adjournment. Present: George P. Fisher, Jr., counsel for defedant; Josiah McRoberts, Esq., counsel for 1251
complainant.

JOSEPH A. WHITE, a witness produced *de bene esse* on behalf of defendant, having been first duly sworn, deposes and says as follows, in answer to interrogatories propounded to him by counsel:

Q. 1. State your name, age, residence and occupation.

A. Joseph A. White; forty six years old; residence, 6441 Jackson avenue, Chicago; manager for F. S. Webster Company, 139 Madison street, Chicago.

Q. 2. What is the business of the F. S. Webster

1252 Company, and how long have you been connected with said business as manager?

A. Dealers in second-hand typewriters and manufacturers of ribbons, carbon paper, etc. I have been manager of the Chicago office for three years from November, 1897.

Q. 3. What makes of typewriting machines does the F. S. Webster Company handle?

A. We handle all makes of machines that are offered for sale on the second-hand market. Should say that we had at the present time in the neighborhood of twenty different makes of typewriting machines in
1253 stock.

Q. 4. What experience had you had in connection with the sale of typewriting machines prior to your taking the position as manager of the Chicago office of the F. S. Webster Company?

A. Have had more or less experience in the last twelve or fourteen years.

Q. 5. How long has the F. S. Webster Company at its Chicago office handled the Rem-Sho typewriter manufactured by the Remington-Sholes Company of Chicago?

1254 A. It's about two years and a half since we first purchased Rem-Sho machines at the Chicago office, so far as I recollect.

Q. 6. What styles and model numbers of Rem-Sho machines have been handled at the Chicago office of the F. S. Webster Company since you have been its manager?

A. We have handled the old model, commonly known as No. 1; also Nos. 2, 4 and 5.

Q. 7. What has been the style of frames, their coloring and finish, of such Rem-Sho machines so handled by the Webster Company?

The question is objected to as immaterial and in-

competent and as calling for secondary evidence, the machines themselves being direct evidence as to the matters inquired about, and also as not proper surrebuttal. 1255

Q. 8. The numbers 1, 2 and 4 have been copper-plated; the number 5's have been japanned in black as to finish; the style of frame on all of the machines, so far as I recollect, have been uniform, and of ornamental design.

Q. 9. As the result of your experience and observation, have you noticed anything peculiar about the wearing quality of the copper-plate or bronze finish of the Rem-Sho machines handled by the Webster Company since you have been its Chicago manager, and have you noticed anything peculiar about the wearing quality of the enameled black on the same style of frame that had the copper-plate finish? 1256

Same objection as before, and on the further grounds that the record does not show that the facts are such as to qualify the witness to testify as an expert on this subject.

A. I have; it has been my experience that the copper-plate has worn off and caused considerable deterioration in value of the machine, and in use has been objectionable to operators on account of corrosion, whereas the japan on the ornamental frame has chipped off, spoiling the appearance of the machine, thereby depreciating its value. 1257

Q. 10. Did you ever make any statement to any of the officers of the Remington-Sholes Company in regard to the wearing qualities of the copper-plate finish or black enameled finish Rem-Sho machines?

A. Something over a year ago I had a conversation with Mr. Paulson, at that time treasurer of the Remington-Sholes Company, in reference to the finish of the ma-

1258 chine, and strongly recommended changing the finish and japanning the machine; in the same conversation I recommended that they do away with the ornamental finish on the machine and make it plain, giving as my reason that owing to previous experience it would wear better and in my mind make a better impression.

Question and answer objected to as immaterial and irrelevant and incompetent.

Q. 11. During the time that you have been the Chicago manager of the F. S. Webster Company, has it been any part of your business to personally sell typewriting
1259 machines?

A. It has.

Q. 12. State, if you know, whether there has been any uniformity of practice among typewriter manufacturers as to the coloring and ornamentation of the machine frames and as to the general structure of such frames?

Same objection as to question 7.

A. It seems to be the customary practice of all manufacturers of typewriters to finish their machines by japanning or enameling, there being very few exceptions to this rule. The coloring is almost universally black.
1260 I remember but one exception.

Q. 13. As the result of your observation and experience, state what you have found to be the practice of manufacturers of typewriting machines with respect to marking their machines conspicuously with numerals to designate the different models or styles of such machines.

A. Nearly all manufacturers of typewriters have been in the habit of numbering their various models from 1 up as high as No. 8. I know of but one exception to this rule. That is the Manhattan typewriter, their models being designated as A and B.

Q. 14. State, if you know, what has been the practice with regard to marking such model numbers upon the machines. 1261

A. They are generally stencilled in gilt or otherwise in some conspicuous place on the machine.

Q. 15. State, if you know, what has been the practice of typewriter manufacturers with regard to ornamentation of the black enamelled frames of typewriting machines, and how long such practice has been in vogue.

Same objection as before.

A. The ornamentation is varied on different makes of machines, nearly all being striped in gold or colors or both, some having other ornamentation in combination. 1262

Q. 16. By what name or names have you heard the typewriting machine made by the Remington-Sholes Company designated or spoken of by customers or prospective purchasers during the time that you have been familiar with such machine?

A. In my earlier experience previous to my connection directly with the Chicago office as manager, I heard the machine mentioned as the Remington-Sholes typewriter. Since my connection with the Chicago office as manager, I have seldom heard it alluded to under any other name than the Rem-Sho typewriter. 1263

Question and answer objected to as not proper surrebuttal.

Q. 17. State, if you know, what has been the practice of various typewriter manufacturers with respect to the arrangement of the keyboard of their machines.

Same objection, and further, that this line of examination is immaterial and irrelevant.

A. There is, I believe, at the present time only one machine which does not furnish its customers with the universal keyboard, if desired.

1264 Q. 18. What do you understand by the term "universal keyboard"?

Same objection.

A. It is the same arrangement of the characters on the keyboard as are used on the Densmore, Smith Premier and the Remington.

*Cross-Examination by Mr. McRoberts.*

X-Q. 19. How long have you been connected with the F. S. Webster Company?

A. About seven years.

1265 X-Q. 20. How long have you been its local manager?

A. Since November, 1897.

X-Q. 21. Prior to becoming local manager of that company what was your occupation?

A. I was general manager of agencies of that company.

X-Q. 22. What were your duties as general manager of that company's agencies?

A. I had the establishing of agencies and to that end traveled through the United States and in England.

Q. 23. What are your duties as local manager of
1266 the F. S. Webster Company?

A. I have entire control of the management and all the business of the company handled from the Chicago office.

X-Q. 24. You have the general direction of the local business, including the general superintendency of the company's salesmen and solicitors?

A. I do.

X-Q. 25. How long has the local office of the F. S. Webster Company handled typewriting machines?

A. About four years.

X-Q. 26. The Chicago office of the F. S. Webster

Company, as I understand your testimony, handles second-hand typewriters only? 1267

A. We handle both new and second-hand machines, not, however, as agents for any particular machine, but are frequently making purchases in various ways of new machines.

X-Q. 27. Its dealings in new machines is but a small percentage of the business done by the company in typewriting machines, the great bulk of the company's business in typewriting machines being in second-hand machines; is that correct?

A. It is.

X-Q. 28. Your observation has been, has it not, that the Remington-Sholes or Rem-Sho typewriters were marked "Remington-Sholes Company, Mfrs., Chicago," on the bar or rod in the rear of the keyboard, something after the manner of the cuts shown on pages 17, 19, 21 of "Defendant's Exhibit Rem-Sho Catalogue No. 2 and 3, H. M. Sterling, Notary"? 1268

The question is objected to as immaterial, irrelevant and not proper cross-examination.

A. My remembrance of the matter is that the machines have been marked with a plate, but could not state definitely as to the wording on the plate whether they are all alike or not. 1269

X-Q. 29. But these plates bore the words "Remington-Sholes," did they not?

Same objection.

A. I am under the impression that they bore the name "Remington-Sholes Company;" beyond that I am unable to state positively.

X-Q. 30. The word Rem-Sho is a contraction or abbreviation of Remington-Sholes, is it not?

The question is objected to as not proper cross-

1270 examination, no foundation for such question being laid in the examination in chief.

A. I am not aware as to whether it is or not.

X-Q. 31. Well, "Rem" is a contraction or abbreviation of "Remington," is it not?

Same objection.

A. We frequently use it as such in our business.

X-Q. 32. Please explain what you mean by your last answer and how you use the word "Rem"?

Same objection.

1271 A. Probably the larger portion of our business is the manufacture of typewriter ribbons, and in writing or recording orders for the ribbon for use on the Remington typewriter we abbreviate, using the term "Rem."

X-Q. 33. Meaning and intending thereby the Remington typewriter?

Same objection.

A. Yes.

X-Q. 34. So that in the business of the F. S. Webster Company the word "Rem" is used to designate and is associated with the well-known Remington typewriter?

1272 Same objection.

A. Yes; the same as we frequently abbreviate the Smith Premier as "Sm," or the Densmore "Dens."

X-Q. 35. Do you refer here in using the word Remington to the typewriting machine manufactured by Wyckoff, Seamans & Benedict?

Same objection.

A. Naturally, as there isn't any other.

X-Q. 36. Is this practice of referring to the Remington typewriter manufactured by Wyckoff, Seamans & Benedict by the contraction or abbreviation "Rem"

quite general in the business offices of the F. S. Webster Company at other points than Chicago? 1273

Same objection.

A. Judging from our invoices from such offices, I should say yes.

Adjourned until 10 A. M., Saturday, February 23, 1901.

February 23, 1901. Met pursuant to adjournment. Present, counsel for respective parties.

X-Q. 37. From your observation and experience in the business of the F. S. Webster Company, how long or for what length of time has the contraction or abbreviation "Rem" been used to designate or been associated with the Remington typewriter made by Wyckoff, Seamans & Benedict? 1274

Same objection as before.

A. Ever since my connection with the F. S. Webster Company we have used the same abbreviation with reference to typewriter ribbons or Remington machines, which has been for the past seven years.

X-Q. 38. Approximately, how many offices for the sale of typewriter supplies are run and controlled by the F. S. Webster Company? 1275

A. Five, in Boston, New York, Philadelphia, Pittsburg and Chicago.

X-Q. 39. Has it any connections or associations in any other cities?

A. It has in the form of agencies.

X-Q. 40. About how many such agencies?

A. Such matters are controlled entirely by the home office at Boston, and I would be unable to state even approximately.

X-Q. 41. How extensive are the ramifications of the business of the F. S. Webster Company?

1276 A. I have been informed that we have agencies and connections in nearly every country in the world at the present time, and in nearly every state in the Union.

X-Q. 42. You are a stockholder, I believe, in this company, so that your information is quite accurate, is it not?

A. Yes; but such information is handed to me verbally by officers in the company in their reports.

X-Q. 43. Is this practice of referring to the Remington typewriter manufactured by Wyckoff, Seamans & Benedict by the contraction or abbreviation Rem quite general in the typewriter trade and among dealers, sales-
1277 men and others engaged in the business?

Same objection as the last.

A. In written matter we judge it to be, but in conversation it is not.

Q. 44. Have you ever heard any one speak of the Remington typewriter or refer to it as the Rem?

Same objection.

A. I have frequently heard Wyckoff, Seamans & Benedict's salesmen speak of it in this manner, and occasionally we use it in this manner in our own office in conversation. Do not remember of a customer having spoken
1278 of it in this way.

X-Q. 45. So that the term Rem is generally accepted and means an abbreviation or contraction of the word Remington?

Same objection.

A. As we use it in our business, yes.

X-Q. 46. And the term Sho is generally accepted and is an abbreviation of the word Sholes?

Same objection.

A. I should say that it might be used in that way;

however, in any correspondence we have with the Remington-Sholes Company we never abbreviate the term. 1279

X-Q. 47. In the use of the different numerals or numbers to indicate different styles or types of typewriting machines, different numbers usually designated machines differing in organization or construction more or less, did they not?

A. Yes.

X-Q. 48. Can you state any point or points of difference in the construction or organization of the No. 6 Remington typewriter over, say, the No. 2 or 4?

A. There are various differences, such as what is denominated the braking of the carriage, tabulating device, the platen knobs, etc. 1280

X-Q. 49. The No. 6 Remington typewriter and the No. 7 Remington typewriter are the same in appearance, general organization and construction, with the exception that the No. 7 has four more keys and writes eight more characters than the No. 6 Remington; is not that correct?

A. It is. I mean it has a few more keys and characters than the No. 6.

X-Q. 50. The No. 6 Remington-Sholes typewriter or Rem-Sho typewriter differs from the No. 4 Remington-Sholes or Rem-Sho typewriter in appearance, does it not? 1281

A. Never having seen the No. 6 Rem-Sho typewriter, am unable to state.

X-Q. 51. Do you know that the Remington-Sholes Company, or have you heard that this company is putting upon the market, or about to put upon the market, a typewriting machine known as No. 7, or designated by this number, which is in appearance the same as the No. 6 Remington-Sholes typewriter, and which differs from this No. 6 only in having more keys and writing more charcters?

1282 The question is objected to as immaterial, irrelevant, incompetent and manifestly improper, as the witness has already stated that he has never seen the No. 6 Rem-Sho typewriter, and what he may have heard about it is not competent evidence.

A. Have heard it stated that the Remington-Sholes had machines designated as No. 6 and No. 7; do not remember of having been informed as to the difference in the machines.

X-Q. 52. Do you remember having been informed that the No. 7 Remington-Sholes machine was the same
1283 in general appearance and outline with the No. 6 Remington-Sholes?

Same objection.

A. I do not.

X-Q. 53. How, in a general way, are the sales of typewriting machines conducted and made by the Webster Company, that is, do you have canvassers and solicitors?

A. We have canvassers in the interest of our supply trade, ribbons, carbon paper, etc., but not in the typewriter line. That is done almost entirely by advertis-
1284 ing.

X-Q. 54. What have been your duties since you assumed the duties as manager of the local office of the F. S. Webster Company?

A. Having had the entire supervision of the office there has been no part of the work of the office that I have not been called upon to perform.

X-Q. 55. You have stated in your direct examination that you remember but one exception where the typewriting machine is not colored black; please state what machine you had in mind.

A. I had in mind the Peerless machine.

X-Q. 56. What other typewriting machines, if any, 1285
do you now recall as being other than black in color?

A. The Oliver, some of which are enamelled green and some are nickelplated.

X-Q. 57. Do you recall any others that are not black?

A. Not among those we would denominate enamelled machines.

X-Q. 58. Well, irrespective of the manner or method in which the color is put on or laid on, what other typewriting machines than the Peerless and Oliver are not black in color, in whole or in part?

1286

A. I do not think of any.

X-Q. 59. How about the Hammond typewriting machine?

A. Some of the Hammonds are in part black.

X-Q. 60. How is it in general with the Hammond typewriters?

A. Think the older forms of machines are mostly nickelplated.

X-Q. 61. Is the Densmore machine striped?

A. I think not.

X-Q. 62. Did you ever have anybody inquire of you whether there was any connection between the Remington machine and the Remington-Sholes machine, or any connection between the makers of these machines? 1287

The question is objected to as immaterial, irrelevant and not proper cross-examination.

A. I have no recollection of such an inquiry.

*Re-Direct Examination de bene esse.*

R-D. Q. 63. Did you ever hear a customer or prospective purchaser designate or speak of the Remington typewriter as the Rem?

A. I recollect of no such case.

R-D. Q. 64. Do you recollect whether in addressing

1288 a customer or a prospective purchaser you have ever used the term Rem to designate the Remington typewriter?

A. I do not recollect of having done so.

R-D. Q. 65. State whether, as the result of your experience, you have ever found any confusion to arise by reason of the use of the term Rem with respect to the Remington machine in the manner indicated in your direct examination, between such typewriter and the Rem-Sho typewriter?

1289 The question is objected to as immaterial and irrelevant, and as calling for the conclusion of the witness and not for the facts or acts relied upon as a basis for such conclusion.

A. I have not.

*Re-Cross Examination.*

R-X Q. 66. As a general rule, founded upon your observation and experience, do not purchasers or prospective purchasers of typewriting machines base their purchases largely upon the reputation of the machine with which the name is associated?

1290 Objected to as not proper re-cross examination, as immaterial and irrelevant and as not proper examination at all, as no foundation for such line of question has been laid in the witness' examination.

A. Yes, as in the second-hand business we make it a point to sell a customer whatever they desire without endeavoring to influence them or educate them to the use of any particular machine.

R-X Q. 67. Customers generally indicate their wish to purchase machines by stating the name by which the machines are generally and popularly known to the public, do they not?

Same objection.

A. They do.

R-X Q. 68. How long have you known of the typewriting machine manufactured by Wyckoff, Seamans & Benedict to have been generally designated by the word Remington? 1291

Same objection.

A. I could not state in years, but have known of the Remington Standard typewriter under that designation ever since I can remember the Remington machine at all. That is, approximately, I should say, about fifteen years.

R-X Q. 69. The typewriting machines manufactured by Wyckoff, Seamans & Benedict and generally known as the Remington machines are regarded by the public and users as machines of high grade, quality and excellence, are they not? 1292

Same objection.

A. They are.

JOS. A. WHITE.

Counsel for defendant now gives notice to counsel for complainant that at the hearing of this cause defendant's counsel will read and submit the following, viz.:

1. A duly certified copy of the decision and opinion of the Konigsliche Kammergericht (Supreme Court of Judicature) of Berlin, Germany, rendered on or about July 3, 1897, in a cause then and there pending, wherein Messrs. Glogowski & Son (some times termed in said decision and opinion Glogowski & Company) were complainants and Henry Newald was defendant, the same being the decision and opinion referred to in paragraph 22 of defendant's answer in this cause. 1293

2. A duly certified copy of the decision and opinion of the Reichsgericht (the Imperial Su-

1294 preme Court), of Berlin Germany, promulgated on or about October 22, 1899, in the matter of the revision of said cause then and there pending between said Messrs. Glogowski & Son (some times termed in said decision and opinion Glogowski & Company), and the said Henry Newald.

3. Translations of said two decisions and opinions above noted.

And counsel for defendant hereby tenders to counsel for complainant what counsel states to be a copy of each of the above-mentioned decisions and opinions, and a copy of each of the above-mentioned

1295 translations.

And counsel for defendant hereby gives notice that if any difference should arise between counsel for complainant and defendant as to the accuracy of said translations, then counsel for defendant will move the court that true and correct translations of said above-mentioned decisions and opinions be made under the order of the court.

Counsel for complainant now states upon the record, and gives notice to counsel for defendant, that at such time as counsel for defendant shall offer to read or submit the alleged duly certified copy

1296 of the decision and opinion of the Konigsliche Kammergericht, and the alleged duly certified copy of the decision and opinion of the Reichsgericht, and the alleged translations of said decisions, or any of them, counsel for complainant will object to the reading or submission of said alleged decisions and opinions and said alleged translations thereof, or any of them, and to their or its use in this cause for any purpose whatever, and will then state the grounds for objection thereto.

Recess taken until 2 o'clock P. M.

1297

HARRY L. CLAPP, a witness produced *de bene esse* on behalf of defendant, having been first duly sworn, deposes and says as follows in answer to interrogatories propounded to him by counsel:

Q. 1. State your name, age, residence and occupation.

A. Harry L. Clapp; twenty-eight years of age; residing at Chicago, Illinois; lawyer, with the firm of Peirce & Fisher, of Chicago.

Q. 2. Have you, at my request, examined any typewriting machines to-day and procured any catalogues with respect thereto, and if so, please state the circumstances connected therewith? 1298

A. At the request of Mr. Fisher I have to-day examined at the office of the United Typewriter & Supply Company, 143 Monroe street, in this city, the New Century Caligraph typewriter, and received at their office a catalogue which contained illustrations and a description of various models of this typewriter.

Q. 3. State what models or styles of the New Century Caligraph you so examined at the office of the United Typewriter & Supply Company, and who showed you such machines, and how such machines were finished.

1299

A. At that office I was shown the No. 5 New Century machine by a young man whose name I did not learn, but who was evidently a salesman, which machine was finished in black enamel and striped with lines of gilt and lines of some other color, I think blue, and which bore upon the front part of the frame of the machine the designation "No. 5." This machine was in general appearance as illustrated on page 4 of the catalogue to which I have already referred.

Counsel for complainant objects to this line of examination as not proper surrebuttal and as im-

1300 material, irrelevant and incompetent, being directed to a matter not in issue in this case, and further as calling for and including secondary evidence.

Q. 4. Can you produce the catalogue referred to in your last answer and which you state you received at the office of the United Typewriter and Supplies Company to-day?

A. I can and do; this is it.

Counsel for defendant offers in evidence pages 4, 10 and 11 of said catalogue, and the same are
1301 marked "Defendant's Exhibit Illustrations of New Century Typewriter, Model Nos. 5, 6 and 7."

Counsel for complainant objects to the same on the grounds above stated.

Q. 5. Were you shown at the office of the United Typewriter and Supplies Company models Nos. 6 and 7 of the New Century typewriter or was any explanation or statement made to you with respect thereto?

Same objection.

A. I asked the salesman about the No. 6 and 7 models and asked him also if he could show them to me. He stated that these models were just like the No. 5
1302 model except that in each there were a few more keys on the keyboard and that the No. 7 model had a long paper carriage, and stated that these machines were those illustrated upon pages 10 and 11 respectively of the catalogue to which I have referred, and at the same time he turned to these pages in the catalogue. He further stated that he had these machines in stock, but that none of them were unpacked as yet and so he could not conveniently show them to me.

Counsel for complainant objects to the answer and moves to strike the same from the record upon the grounds above stated in the objection to

questions and answers 2, 3 and 4, and further on 1303
the ground that the same relates to and purports to give a conversation between third parties who are not parties to or interested in this suit and which was not held in the presence of the parties to this suit or either of them.

*Cross-Examination by Mr. McRoberts.*

X-Q. 6. Then I understand that you did not see the alleged No. 6 and 7 New Century typewriter; is my understanding correct?

A. That is correct.

X-Q. 7. Have you ever seen a No. 6 and No. 7 1304
Remington-Sholes or Rem-Sho typewriter?

The question is objected to as immaterial and irrelevant and not proper cross-examination, the witness having been called to testify simply as to a single point to which the question of counsel can manifestly have no relation whatever.

A. I have seen a No. 6 Rem-Sho typewriter, but I have never seen a No. 7.

X-Q. 8. Have you been informed by anybody connected with the Remington-Sholes Company in any manner of the relative appearances of these two ma- 1305
chines?

Same objection.

A. I have understood that the No. 7 had a few more keys than No. 6 Rem-Sho. This information was, however, not given to me by any member of the Remington-Sholes Company or by any employé thereof. I can not at the present moment remember just where I heard it, but in a general way I understood that this was the case. I have not heard anyone connected with the Remington-Sholes Company say anything relative to the appearance of these two machines.

1306 X-Q. 9. Have you heard from other sources anything concerning the relative appearances between the No. 6 and No. 7 Rem-Sho typewriter?

Same objection, and the question is further objected to as calling for hearsay evidence.

A. As near as I can recollect, I have never heard any comparison made of the appearances of these machines.

X-Q. 10. Have you heard that they were of similar appearance and differed only as to the number of keys?

Same objection.

1307 A. I have never heard anything relative to the appearance of these machines.

X-Q. 11. Have you heard that there were any other differences except in the number of keys?

A. I have not. My information upon the subject is very limited.

HARRY L. CLAPP.

Counsel for complainant requests counsel for defendant to state whether or not he has any further proof in surrebuttal to offer, this being the last day for the adducing of the same under the stipulation and agreement of counsel.

1308

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

I, Alberta Adamick, a Notary Public in and for the County of Cook and State of Illinois, in the District aforesaid, do hereby certify that the foregoing depositions of Charles E. Bates, Fred W. Payne, Joseph A. White and Harry L. Clapp were taken by and before me, acting as Special Examiner by consent, pursuant to stipulation and by agreement of parties at the times and

places therein specified; that the parties to said cause 1309
were present at the taking of said depositions, the complainant being represented by its counsel, Mr. Josiah McRoberts, and defendant by its counsel, Mr. George P. Fisher, Jr., as therein appears; that said testimony was taken on behalf of defendant, to be used upon the hearing of a certain cause now pending in the Circuit Court of the United States for the District of Vermont, wherein Wyckoff, Seamans & Benedict is complainant and the Howe Scale Company of 1886 is defendant; that before deposing, the said Charles E. Bates, Fred W. Payne, Joseph A. White and Harry L. Clapp, and each of them, 1310
were by me duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that these depositions were severally taken down by me as therein appears.

And I further certify that I am neither attorney nor of counsel for any of the parties in said depositions or caption named, and am in no wise interested in the result of said cause.

In testimony whereof, I have hereunto set my hand and notarial seal this 23rd day of February, A. D. 1901.

ALBERTA ADAMICK,

[SEAL.] Notary Public, Cook County, Illinois. 1311

1315

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict
*vs.*
Howe Scale Company of 1886. } In Equity.

DEFENDANT'S MOTION TO SUPPRESS TESTIMONY.

And now comes defendant, by its attorneys, Messrs. Butler & Moloney and Messrs Peirce & Fisher, and moves the court that the following portions of the depositions of witnesses examined on behalf of complainant (together with any and all exhibits introduced in such depositions subject 1316
to the objections there noted) be suppressed or stricken from the record, for the reason stated in the objections appearing upon the record:

(1) The answer to R-R-X Q. 102 of the deposition of T. F. Crean, C. R., pp. 138-140; also the answers to Q. 26, 27, 30 and 31 of the deposition of B. A. Brooks, C. R., 195-196; also the answers to Q. 6, 8 and 14 of the deposition of A. P. Brooks, C. R., pp. 239-242; also the answers to Q. 10, 11 and 12 of the deposition of J. S. Bayes, C. R., p. 280; also the answers to Q. 12, 13, 14, 15 and 16 of the deposition of S. W. Crandall, C. R., pp. 289-292; also the answers to Q. 12, 13 and 15 of the deposition of F. A. 1317
Conyne, C. R., pp. 313-314; also the answers to Q. 11, 12, 13, 14, 15 and X-Q. 19 of the deposition of D. McKay, C. R., pp. 317-320; also the answers to Q. 25, 26, 27 and 28 of the deposition of W. J. McNally, C. R., 324-326; also that part of the deposition of Z. G. Sholes from Q. 23 to Q. 87, C. R., pp. 392-406; also the answer to Q. 27, 28, 30 and 31 and X-Q. 42 of the deposition of F. L. Browne, C. R., pp. 448-449 and 451; also complainant's exhibit "Amendment to Articles of Association" and complainants' exhibit "Articles of Association of The Z. G. Sholes Com-

1818 pany," C. R., pp. 453-454; also the several assignments introduced in evidence in C. R., pp. 455 and 456; also the photograph introduced in C. R., p. 456; also complainant's exhibit "Remington-Sholes Syndicate Prospectus," C. R., p. 457; also the several letters patent introduced in C. R., pp. 460-464; also complainant's exhibit "Mett Letter and Envelope," introduced in C. R., p. 493.

(2) Also the following alleged surrebuttal testimony taken on behalf of complainant, viz., all of the deposition of B. L. Holton, C. R., Vol. 2, pp. 1-9; also all of the deposition of W. A. Catlin, C. R., Vol. 2, pp. 9-19; also all of the deposition of S. W. Crandall, C. R., Vol. 2, pp.
1819 20-27; also all of the deposition of John S. Bayes, C. R., Vol. 2, pp. 28-30; also all of the deposition of J. F. Hobbs, C. R., Vol. 2, pp. 30-40; also all of the deposition of R. C. Daniel, C. R., Vol. 2, pp. 41-43; also all of the deposition of W. C. Goodhue, C. R., Vol. 2, pp. 43-45; also the exhibit marked "Complainant's Exhibit Remington-Sholes Company No. 6," C. R., Vol. 2, p. 48; also all of the deposition of George T. Newton, C. R., Vol. 2, pp. 98-106; also all of the deposition of J. B. Culpepper, C. R., Vol. 2, pp. 110-120.

(3) Also the following portions of the testimony on
1820 behalf of complainant and relating to acts, advertisements, publications, etc., occurring in foreign countries: The answer to Q. 48, 49 and 50 of the deposition of R. M. Jones, C. R. 230, and the exhibits there introduced; also all that part of the deposition of R. M. Jones from Q. 5 to Q. 36, C. R., pp. 374-384, and the various exhibits there introduced; also the entire deposition of E. Beitel, C. R., pp. 385-386; also the entire deposition of M. R. Pollock, C. R., pp. 458-459 and the exhibits there introduced; also the entire deposition of John Volk, C. R., pp. 464-466, and the exhibits there introduced; also the entire deposition of Leo Nabokoff, C. R., 502-507, and the exhibits there in-

troduced; also all of the deposition of R. M. Jones, C. R., pp. 507-510, and the exhibits there introduced; also the entire deposition of J. F. McClain, C. R., Vol. 2, pp. 84-91, and the exhibits there introduced; also the entire deposition of G. F. Walleu, C. R., Vol. 2, pp. 92-97, and the exhibits there introduced; also the entire deposition (No. 4) of R. M. Jones, C. R., Vol. 2, pp. 106-110. 1321

(4) Also the exhibits introduced by the stipulation appearing in C. R., Vol. 2, pp. 2-5 of exhibits, which said stipulation was made subject to the objection to said exhibits appearing upon pp. 48-49 of C. R., Vol. 2; also to the several exhibits introduced in this stipulation, C. R., Vol. 2, pp. 8-9 of exhibits. 1322

(5) Also the following exhibits appearing in Vol. 2 of Complainant's Record, viz.: The assignments, etc., in C. R., Vol. 2, pp. 158-175; also the exhibits from foreign publications, etc., appearing in C. R., Vol. 2, pp. 230, 231, 233, 235-257; also the exhibits from foreign publications, etc., C. R., Vol. 2, pp. 305, 308-318; also pp. 322-326; also pp. 331, 335; also pp. 345, 349 and 350; also pp. 347, 348.

PEIRCE & FISHER.

1323

CHICAGO, ILLS., May 4, 1901.

To H. D. DONNELLY, ESQ.,
280 Broadway, New York, N. Y., and
W. L. BURNAP, ESQ.,
Burlington, Vt.,
Attorneys for Complainant.

Please take notice that immediately before the final hearing of this cause by his Honor, Judge Wheeler, at Brattleboro, Vt., on May 29, 1901, or upon such other date as may be assigned by the court for such final hearing, we shall

1824 present to the court the foregoing motion to suppress the the portions of complainant's testimony mentioned in said motion.

PEIRCE & FISHER.

Service of the foregoing notice and a copy of the foregoing motion is hereby acknowledged this 6th day of May, A. D. 1901.

H. D. DONNELLY.

1825

1826

**Defendant's Exhibit Remington Answer to Wyckoff, Seamans & Benedict Notification.** (Vol. 1, p. 355.)

---

JANUARY 22, 1896.

MESSRS. WYCKOFF, SEAMANS & BENEDICT,
327 Broadway,
New York City.

*Gentlemen*:—We have your two letters of January 8th, 1896, concerning trade-mark and Letters Patent. Your communication of June 16th, 1895, was received during the very protracted absence of our President, and should have been answered on his return some months later but it had grown stale and was overlooked, which we regret.

The writer and Mr. Sholes invested a great deal of time and money in developing a typewriting machine, fit to compete with your own and other excellent machines already in the market, before organizing this company and inducing others to join us in the business. As a matter of course, at the outset and continuously since, we and our associates have consulted eminent counsel here and in the East, as to both trade-mark and patents, and have, in their judgment and our own, full moral and legal right to enter the old and substantially open field of typewriter manufacturers as we have done. We have carefully respected valid patents, and in using our own names, the right to which we had never alienated, we have scrupulously avoided all deception of the public, both in the superficial appearance and construction of our machine, and in all our printed and verbal representations regarding it. Necessarily we must defend our action, if called upon so to do in the courts, and shall cheerfully abide by their decision. although, naturally, we deprecate the annoyance and expense of litigation.

Our investment is already so large that we are obliged to stay permanently in the field. Our machine is an expensive one to manufacture, and to be a financial success must sell for good prices. You will find us, therefore, conservative and honorable competitors whatever may be the result of any litigation you may consider it advisable to commence.

Yours truly,
(Signed) F. REMINGTON.
General Manager.

## OLD ADVERTISEMENTS, OLD NAME-PLATE AND STENCIL.

**Defendant's Exhibit Old Advertisements in Chicago Business Directory.** (Vol. 1, p. 356.)

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[The advertisement on the back of Directory reads]:

**Remington-Sholes**

[Cut of Typewriter.]

**TYPEWRITER**

(NOT THE REMINGTON STANDARD)

MOST DURABLE AND PRACTICAL TYPEWRITER MADE

53 DEARBORN STREET

TEL. MAIN-3406

Send for Catalogue CHICAGO

[The advertisement on page 660 of Directory reads]:

REMINGTON - SHOLES TYPEWRITER CO. C N. Fay, pres; F H. Head, v. pres; F. Remington, gen. mngr; Z. G. Sholes, supt; C. E. Anderson, sec. and treas; genl. offices 53 Dearborn.

[The advertisement on page 1466 of Directory reads]:

**REMINGTON-SHOLES**
TYPEWRITER CO. 53 Dearborn.

**Defendant's Exhibit Remington-Sholes Old Stencil.** (Vol .1, p. 102.)

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**REMINGTON-SHOLES**
**TYPEWRITER**
**CHICAGO, ILL. U. S. A.**

**Defendant's Exhibit Remington-Sholes Typewriter Company Name-Plate.** (Vol. 1, p. 101.)

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**EXHIBITS RELATING TO LETTER-HEADS SIGNS, BUSINESS CARDS, CATALOGUES, INSTRUCTIONS, ETC., OF REMINGTON-SHOLES COMPANY.**

**Defendant's Exhibit Remington-Sholes Co. Letter Head.** (C. R. Vol. 1, p. 270.)

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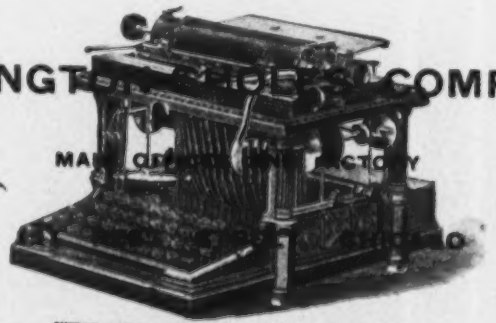
C. N. FAY, PREST. F. H. HEAD, V. PREST. F. REMINGTON, GEN. MGR. J. V. PAULSEN, SEC'Y AND TREAS.



REMINGTON-SHOLES COMPANY

MAIN OFFICE AND FACTORY

REM-SHO

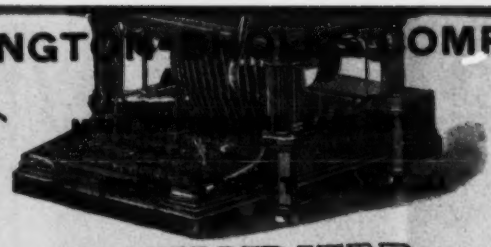
TELEPHONE NO. NORTH 572

CABLE ADDRESS "REM-SHO," CHICAGO

TYPEWRITER.

FOLD OUT IS TOO LARGE TO BE FILMED

REMINGTON [illegible] COMPANY St. Petersb[illegible]

REM-  SHO

TYPEWRITER.

[illegible] A. B. C. 4TH EDITION.
[illegible] "REM-SHO," CHICAGO

MEMBERS OF THE NATIONAL ASSN. OF MANUFACTURERS OF THE U. S.

4 x 11/4 feet.

Dear Sir:-

The subject of advertising is one to which we have given considerable time and thought, and upon careful investigation we have reached the conclusion that an attractive outdoor sign, possessing extreme durability, being constantly before the eyes of the people, is one of the very best advertising mediums that can be adopted.

We have, therefore, at considerable expense, gotten up an enameled sign of extreme durability, four feet long by one and one-quarter feet wide, in blue and white, as per above illustration.

We propose to send you one (or more) of the above signs, requiring you to make a deposit of $2.00 covering same, which will be refunded to you at any time upon the return of the sign in good order.

In view of the fact that we are supplying these practically at our own expense, we deem it just and proper that you should stand the transportation charges, and in case you place an order with us we shall forward them charges collect.

Anticipating many orders throughout the country, we respectfully urge your prompt reply.

Yours very truly,

REMINGTON-SHOLES COMPANY.

Frankfort
Breslau
Stettin
Leipsig
Bombay
Sidney

4 x 11\4 feet.

FOLD OUT IS TOO LARGE TO BE FILMED

SHO

TER

NME IL

**Defendant's Exhibit Page, Dennis & Company Card.** (Vol. 1, p. 55.)

REM-SH[illegible]EWRITERS

THE RE[illegible]S CO.

P[illegible]O.

341 [illegible]WAY,

TELEPHONE 839 FRANKLIN. NEW YORK.

**Defendant's Exhibit Wyckoff, Seamans & Benedict Card, Chicago Office.** (C. R., Vol. 1, p. 469.)

*Wyckoff, Seamans & Benedict,*

*Remington Standard Typewriters,*

*144 Madison St., Chicago.*

G. E. SMITH.

**Defendant's Exhibit Gillelan Rem-Sho Card.** (Vol. 1, p. 324.)

REM-SHO TYPEWRITERS.

[Cut of machine.]

**J. T. GILLELAN & CO.,**

Dealers for State of Maryland,

**Defendant's Exhibit Rem-Sho Blotter No. 1.** (Vol. 1, p. 11.)

---

C. N. FAY, PRES. F. H. HEAD, VICE-PRES. F. REMINGTON, GENL. MGR. J. V. PAULSEN, SEC'Y AND TREAS.

**Model No. 4**
76 CHARACTERS

UNIVERSAL KEYBOARD

**Model No. 5**
86 CHARACTERS

REMINGTON-SHOLES COMPANY

REM-

SHO

MAIN OFFICE AND WORKS
[illegible] CHICAGO

TYPEWRITER

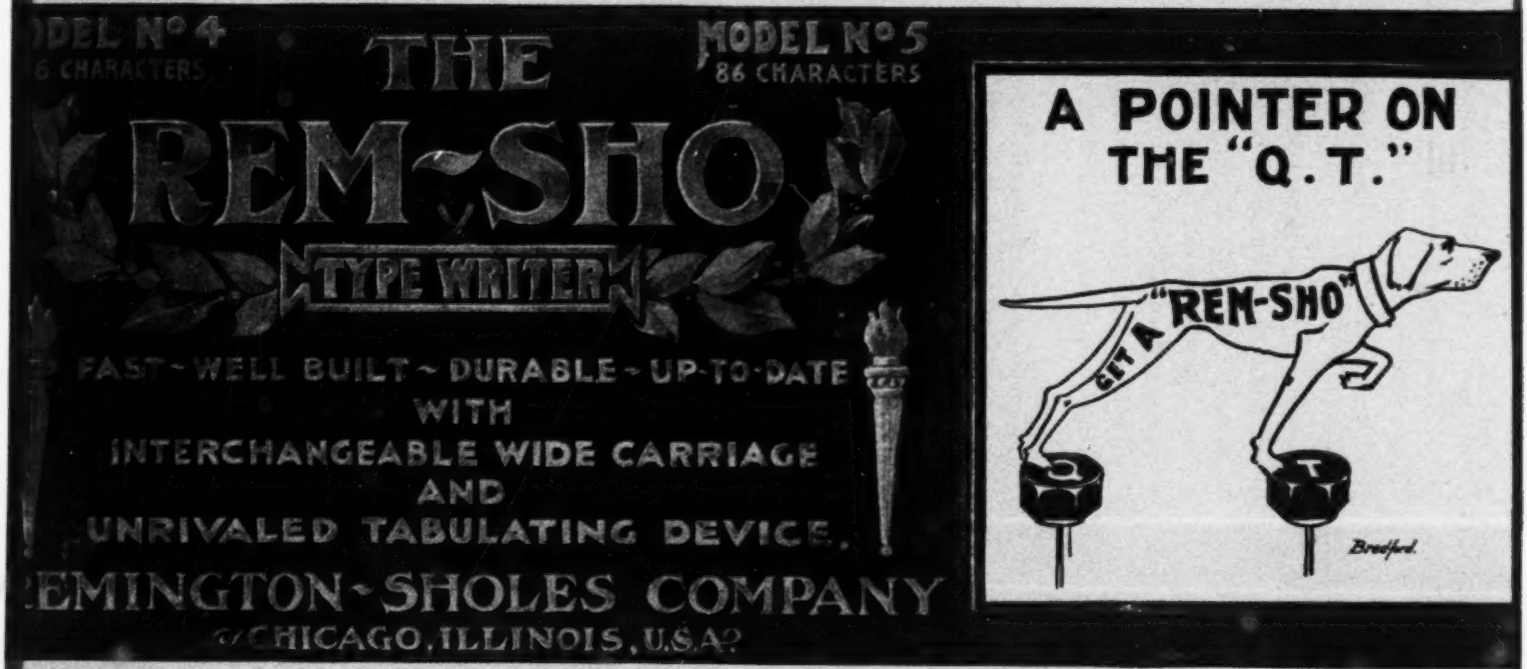
Interchangeable Long Carriage
Straightaway Ribbon Feed
Rigid Roller Bearing Carriage
Perfect Adjustable Escapement
Beautiful—yet Durable and Simple

FOR SALE BY

Superlative High Grade
Typewriter Specialties
Rem-Sho Ribbons
Rem-Sho Carbons and a full line of
General Stenographers' Supplies

THE REM-SHO TABULATOR

Defendant's Exhibit Rem-Sho Blotter No. 2. (Vol. 1, p. 12.)



**Defendant's Exhibit Remington-Sholes Company Instructions to Dealers.** (Vol. 1, p. 3.)

[This exhibit is substantially the same as "Complainant's Exhibit Instructions to Agents by the Howe Scale Co.," C. R., Vol. 2, p. 223, with the exception that the matter on lines 17-26 (p. 229) of said exhibit is changed to read as follows]:

"The machine has been fully displayed, and it rests with the salesmen to add such interesting facts, such as the history of the Company, the connection of our Mr. Remington with this machine, the fact that this is the second generation of typewriter builders, and that the same standard of excellence is being maintained in the manufacture of this machine as all other goods which have been produced by the Remingtons."

[In "Defendant's Exhibit Remington-Sholes Company Instructions to Dealers" the following additional matter appears]:

"NOTICE:—

"We do not want any of our dealers, agents, travelling men, or salesmen to make any misrepresentation in regard to our machine, neither do we want them to connect either the machine or the Company with the Remington Standard Typewriter Co. We do not consider that it does us any good to make this comparison, and what we want is that our representatives sell our machine on its merits alone, which we believe are sufficient to enable them to meet competition, and we do not feel at all flattered to have the title of our machine and that of the Remington confused.

"Kindly bear this in mind and in making sales let the goods speak for themselves.

"We have no hesitancy in saying that our machine will stand the test alongside any Standard machine now on the market and all we ask is a fair decision."

**Defendant's Exhibit Rem-Sho Catalogue Nos. 2 and 3.** (Vol. 1, p. 112.)

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[This is first catalogue of "Rem-Sho" machine in evidence. The last page is as follows:]

**In Regard to Our Name.** The question is often asked, "What connection has the Remington-Sholes Company with the Remington Standard Typewriter?" We answer, none whatever. The "Rem-She" Typewriter is manufactured by the Remington-Sholes Company in Chicago, Ill., U. S. A. It originated in the brain of Mr. Zalmon G. Sholes, a son of the original inventor of the Remington Standard Typewriter. In 1893 Mr. Sholes came to Mr. Remington, a son of the original manufacturer of the well-known typewriter which bears his name, and laid his plans and the results of his work before him. The two formed a partnership, and began at once to develop the typewriter with which they are now identified. Later, a Company was formed of strong capitalists to manufacture the machine and put it on the market, since when it has been tested by two years' use and the No. 2 Model brought out under the personal supervision of Mr. Fay.

We state then, emphatically, that this Company has no connection whatever with that well known and excellent machine, the Remington Standard Typewriter, and caution all possible customers against confusing the "Rem-Sho" with that machine or any other.

We are sometimes asked about the right of the Messrs. Remington and Sholes to the use of their own names in connection with typewriters. In answer we would say that the law is absolutely clear that every man has a right to use or permit the use of his own name (which is his birthright) in business, provided it is so used as not to deceive. In order to prevent deception *absolutely*, we have made our machine, in finish and outward appearance, entirely unique, and in all public advertisements, signs, marks and statements, we are careful to set forth that it must not be confounded with any other. This is in accordance with law and good faith, and renders our use of these names morally and legally unassailable.

**Defendant's Exhibit Rem-Sho Catalogue, Nos. 4 and 5.** (Vol. 1, p. 6.)

[This exhibit is the last edition of Rem-Sho catalogue in evidence. The part referring to use of the name is found on pages 22 and 23, as follows]:

In Regard to Our Name. The question is often asked, "What connection has the Remington-Sholes Company with the Remington Standard Typewriter?" We answer, none whatever. The "Rem-Sho" Typewriter is manufactured by the Remington-Sholes Company in Chicago, Ill., U. S. A. It originated in the brain of Mr. Zalmon G. Sholes, a son of the original inventor of the Remington Standard Typewriter. In 1893 Mr. Sholes came to Mr. Remington, a son of the original manufacturer of the well-known typewriter which bears his name, and laid his plans and the results of his work before him. The two formed a partnership, and began at once to develop the typewriter with which they are now identified. Later, a Company was formed of strong capitalists to manufacture the machine and put it on the market, since when it has been tested by four years' use and the Nos. 2, 3, 4 and 5 Models brought out under the personal supervision of Mr. Fay.

We state then, emphatically, that this Company has no connection whatever with that well known and excellent machine, the Remington Standard Typewriter, and caution all possible customers against confusing the "Rem-Sho" with that machine or any other.

We are sometimes asked about the right of the Messrs. Remington and Sholes to the use of their own names in connection with typewriters. In answer we would say that the law is absolutely clear that every man has a right to use or permit the use of his own name (which is his birthright) in business, provided it is so used as not to deceive. In order to prevent deception *absolutely*, we have made our machine, in finish and outward appearance, entirely unique, and in all public advertisements, signs,

marks and statements, we are careful to set forth that it must not be confounded with any other. This is in accordance with law and good faith, and renders our use of these names morally and legally unassailable.

## Defendant's Exhibit Diamond Supply Co. Contract.

(Vol. 1, p. 13.)

REMINGTON-SHOLES COMPANY,
127 Rees Street,
Chicago, Ill., U. S. A.
LOCAL DEALERS' CONTRACT.

MEMORANDUM OF AGREEMENT Made this 24th day of March, 1899, by and between the REMINGTON-SHOLES COMPANY, a corporation of Illinois, hereinafter called for brevity "The Company," and DIAMOND SUPPLY CO., hereinafter called for brevity "Diamond."

1. The Company hereby appoints "Diamond" its local dealer at St. Joseph, Mo., for the sale of typewriting machines and other articles manufactured or sold by it, for the following described territory: City of St. Joseph, Mo., and nearby adjacent territory.

2. The Company agrees to fill orders for machines and supplies sent in by "Diamond" if properly signed by responsible customers, shipping free on board cars from its office at Chicago, Ills., transportation charges "collect;" to bill sales to customers at the prices agreed upon by "Diamond" and to allow "Diamond" as commission on sales the excess charged the customer over $60.00 for No. 2 and $62.50 for No. 3 Rem-Sho machines, and $2.50 for metal cover with baseboard, when wanted. Upon typewriter supplies, desks, and cabinets, the Company will allow as commission the excess charged the customer over 30 per cent. off manufacturers' list. All commissions payable to "Diamond" promptly after payment of the customer's account to the Company. Terms to customers, net thirty days, 5 per cent. off the invoice for cash ten days.

3. The Company will take from customers good and saleable second-hand machines in part payment for its own machines at such prices as it may from time to time fix by its exchange list or special correspondence; but "Diamond" shall not be obliged to turn in such exchanges to the Company if he prefers to handle them otherwise. "Diamond" agrees to receive, securely pack, and ship such second-hand machines to the Company without charge for so doing.

4. The Company will make its own collections, but "Diamond" agrees to assist the Company in making same to any reasonable extent required by the Company.

5. "Diamond" agrees to repair and adjust machines of the Company's manufacture within said territory during the life of any guarantee given by the Company, without charge to the Company for such service. The Company to furnish repair parts therefor without charge to "Diamond." "Diamond" also agrees to sell no typewriters in competition with those manufactured by the Company during the life of this agreement without the written consent of the Company thereto.

6. Inasmuch as it is oftentimes impossible to deal with railroads and other large users of typewriters through local dealers the Company reserves the right to sell to such purchasers at such points and in such manner as may be necessary to get their business.

7. This agreement may be terminated by either party at will by mailing written notice to the other party one month in advance of the date when termination shall take effect. Also it may be terminated by either party without notice in case of default on the part of the other. It shall not be valid until executed on the part of the Company by its president, Vice-President, or General Manager.

Executed at St. Joseph, Mo., the day and year first above written.

REMINGTON-SHOLES COMPANY,
By C. N. FAY, Prest. (Signed).
DIAMOND SUPPLY CO., PENN. (Signed).

## EXHIBITS SHOWING HOW REM-SHO MACHINE IS MARKED.

**Defendant's Exhibit Rem-Sho Paper Table.** (Vol. 1, p. 104.)

**Defendant's Exhibit Remington-Sholes Company Name-Plate.** (Vol. 1, p. 16.)

## EXHIBITS RELATING TO WEINGART SALE AT NEW YORK OFFICE OF PAGE, DENNIS & COMPANY.

**Defendant's Exhibit Weingart Invoice.** (Vol. 1, p. 281.)

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THE HOWE SCALES.

Established 1856.

NEW YORK, June 29th, 1898.

(Cut of a Scale.)

S. WEINGART

Grand Hotel Station, Ulster Co., N. Y.

Bought of PAGE, DENNIS & CO.

Factory at RUTLAND, VT.

341 Broadway.

TERMS: .....

Goods received and delivered at 88½ Leonard Street.

1 #2 Rem-Sho Typewriter # 2792..... .....$65 00

DUPLICATE

Received payment, June 29, 1898,
Page, Dennis & Co.,
Per Lewis.
N. Y.

I certify the above is a true copy of the original.
W. C. PAGE, one of the firm of
Page, Dennis & Co.

## Defendant's Exhibit Weingart Sale Slip. (Vol. 1, p. 52.)

(Form R—300—Feb., 1898.

AGENCY. New York City 6/29/1898

### To THE REMINGTON-SHOLES TYPEWRITER CO.

Messrs. Page, Dimmock & Co.

PLEASE DELIVER BY Express F. O. B.

MARKED S. Weingart,
Grand Hotel Station,

AND TO BE KEPT ON PREMISES Ulster Co., N. Y.

REMINGTON-SHOLES TYPEWRITER AND APPURTENANCES, AS FOLLOWS:

One STYLE 2 MACHINE 8 SHOP NO. 2792 $ 97.50

LONG CARRIAGE, WITH RACK $

METAL COVER, WITH BASEBOARD $

CABINET STAND WOOD DRAWER $

FOR WHICH THE UNDERSIGNED AGREES TO PAY THE SUM OF

Sixty-five xx/100 DOLLARS.

AS FOLLOWS: CASH. $ 65.00 NOTES. $ — — OLD MACHINE —

School Disct. VALUED AT $ 32.50

Deferred payments to bear interest and notes to be executed to order of the R. S. T. Co., upon its special blank forms. The possession of above described goods and contracts is not to be considered evidence of ownership, but it is expressly agreed that the title of all said property is to remain in the R. S. T. Co., until full amount of purchase money is paid. In case of default in any one of the deferred payments above specified, or in case of removal of said goods, or any part thereof from said premises, without consent of the R. S. T. Co., or in the event that the undersigned shall mortgage or part with the possession of said property, or any part thereof, voluntarily or involuntarily, without the R. S. T. Co.'s consent, the R. S. T. Co. shall have the right immediately to enter and search said premises, to resume possession of said property wherever it may be found and remove the same with or without process of law, and may cancel this order and retain all moneys paid hereupon as liquidated damages and rental for said property.

DATED AT Newpin, N.Y. SIGNED

June 29th 1898 ADDRESS

MEMORANDUM OF NOTES REFERRED TO ABOVE. SALES NO.

| DATE DUE. | AMOUNT. | DATE DUE. | AMOUNT. | DATE DUE. | AMOUNT. | CHECK. |
|---|---|---|---|---|---|---|

Commission to Hatch $6.50

O.K.
J. O. Parker

FORM 88.
" 84.
" 74.
" 78.

## EXHIBITS RELATING TO BARTELME & STALLWOOD RENTAL OF REM-SHO MACHINES.

**Defendant's Exhibit Bartelme & Stallwood Receipt.**
(Vol. 1, p. 81.)

**Defendant's Exhibit Bartelme & Stallwood Receipt for Second Machine.** (Vol. 1, p. 82.)

[These rental receipts are substantially alike, No. 1 being shown by the attached copy.]

Form 189.

Bartelme & Stalwood, CHICAGO, Oct. 16, 1899. 190

138 So. Water St., City.

Mr.

By

Via

Cash

To REMINGTON-SHOLES COMPANY, Dr.

REM MAIN OFFICE AND FACTORY, SHO

TYPEWRITER.

FOR PURCHASES AS BELOW

| | | |
|---|---|---|
| Rent on Rem-Sho Typewriter #3121 | | |
| from 9/13 to 11/13 | 8 | 00 |

**Defendant's Exhibit Remington-Sholes Bill Head.**
(C. R., Vol. 1, p. 486.)

[Same as Defendant's Exhibit Sample Bartelme & Stallwood Rental Bill.]

**Defendant's Exhibit Bartelme & Stallwood Letter, October 17, 1899.** (Vol. 1, p. 83.)

BARTELME & STALLWOOD,
Commission Merchants
And Wholesale Dealers in
BUTTER, EGGS, POULTRY, VEAL, ETC.
138 South Water Street.

CHICAGO, Oct. 17th, 1899.

REMINGTON-SHOLES TYPEWRITER CO.,
126 State St., City.

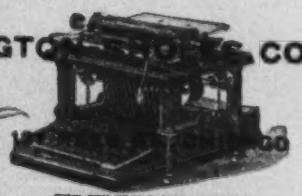
*Gentlemen:*—Please send New Purple Copying Typewriter Ribbon for Machine #3121, at once and thereby greatly oblige

Yours respectfully,
BARTELME & STALLWOOD.

**Defendant's Exhibit Sample Bartelme & Stallwood Rental Bill.** (Vol. 1, p. 82.)

R. S. CO. FORM 100. 6M. 3-00

MINGTON-SHOLES COMPANY



SHO RENTAL TRIAL RECEIPT

TYPEWRITER.

RENTAL

Received of the Remington-Sholes Company, ON TRIAL, Rem-Sho Typewriter, Style No. 2

ial No. 3121 with Rubber Cover & Table

ich if not purchased by the undersigned we agree to hold subject to the order of the Remington-
les Company, and return in good order on its demand, made by any authorized representative.
to pay four dollars per month while we keep the same

Signed Bartelme & Stallwood

June 13,1899 189

138 So.Water Str. D.

## EXHIBITS RELATING TO PITTSBURG MATTERS.

**Defendant's Exhibit Scorer Pittsburg Card.** (Vol. 1, p. 230.)

**Defendant's Exhibit Williams, Sloan & Griffith Letter.** (Vol. 1, p. 221.)

THE HOWE SCALE CO.

Factory, Rutland, Vt.

The "HOWE"
and TRIBUNE
BICYCLES.
107 Market Street.
S. M. EVANS, Mgr.

PITTSBURGH, PA. Jan. 29, 98.

WILLIAMS, SLOAN & GRIFFITHS,
Greensburg, Pa.

*Gentlemen:*—Your order through our Mr. Scorer for 1-Number 3-Rem-Sho Typewriter has been received and we have ordered this machine sent you direct by express from the factory, so that there will be no delay and we trust this will be satisfactory to you.

Thanking you for the order, we are,
Yours truly,
THE HOWE SCALE CO.

**Defendant's Exhibit Robbins & Kunkle Invoice for Rem-Sho Machine.** (Vol. 1, p. 360.)

---

RAILWAY SUPPLIES,
Trucks, Baggage and Express Wagons,
LETTER PRESSES,
Steel Wheelbarrows,
TROEMNER'S FINE SCALES, and all kinds of GROCERS' FIXTURES.
BICYCLES and TYPEWRITERS.

HOWE SCALES.
Terms Net Cash.

PITTSBURGH, May 12th, 1898.

ROBBINS KUNKLE
Greensburg, Pa.

Bought of THE HOWE SCALE CO.
O. B. 1476 Payable only to us or our order.
O. No.
Sold by Telephone 424.
107 Market Street.

TYPEWRITER DEPARTMENT.

| | | |
|---|---|---|
| 1 #3 Rem-Sho Typewriter #328 & cover. | | 102.50 |
| Credit. | | |
| 1 #5 Remington #23358 | | 42.50 |
| | | 60.00 |

Rec'd Pay't 5/19, 1898.
THE HOWE SCALE CO.,
Per W. L. BEITEL.

O. K.
Alkire.

**Defendant's Exhibit Robbins & Kunkle Agreement with Howe Scale Co., May 12, 1898.** (Vol. 1, p. 361.)

---

GREENSBURG, PA., May 12th, 1898.

The Howe Scale Company of Pittsburg hereby sells to Robbins & Kunkle one Remington-Sholes Typewriter No. 3-378, for the sum of One hundred two and fifty one hundredths ($102.50) Dollars, to be paid Sixty ($60.00) Dollars cash and forty-two and fifty one hundredths (42.50) Dollars for Remington Typewriter No. 23358.

And in consideration thereof the said The Howe Scale Company warrants and guarantees that the said Remington-Sholes Typewriter No. 3-378, is made of first-class material, durable and in a workmanlike manner, and we hereby covenant and agree to keep said machine in good repair for two (2) years from the above date.

In witness whereof the said The Howe Scale Company hereunto sets its seal, attested by its President and Secretary.

THE HOWE SCALE CO. (SEAL.)
S. M. EVANS, Manager.

Attest:
THE REMINGTON-SHOLES COMPANY,
D. M. ALKIRE, Mgr.

MARCH 28, 1900.

The guarantee on above machine is extended twelve months beyond May 12th, 1900, to May 12th, 1901.

H. E. HATCH,
For Remington-Sholes Co.

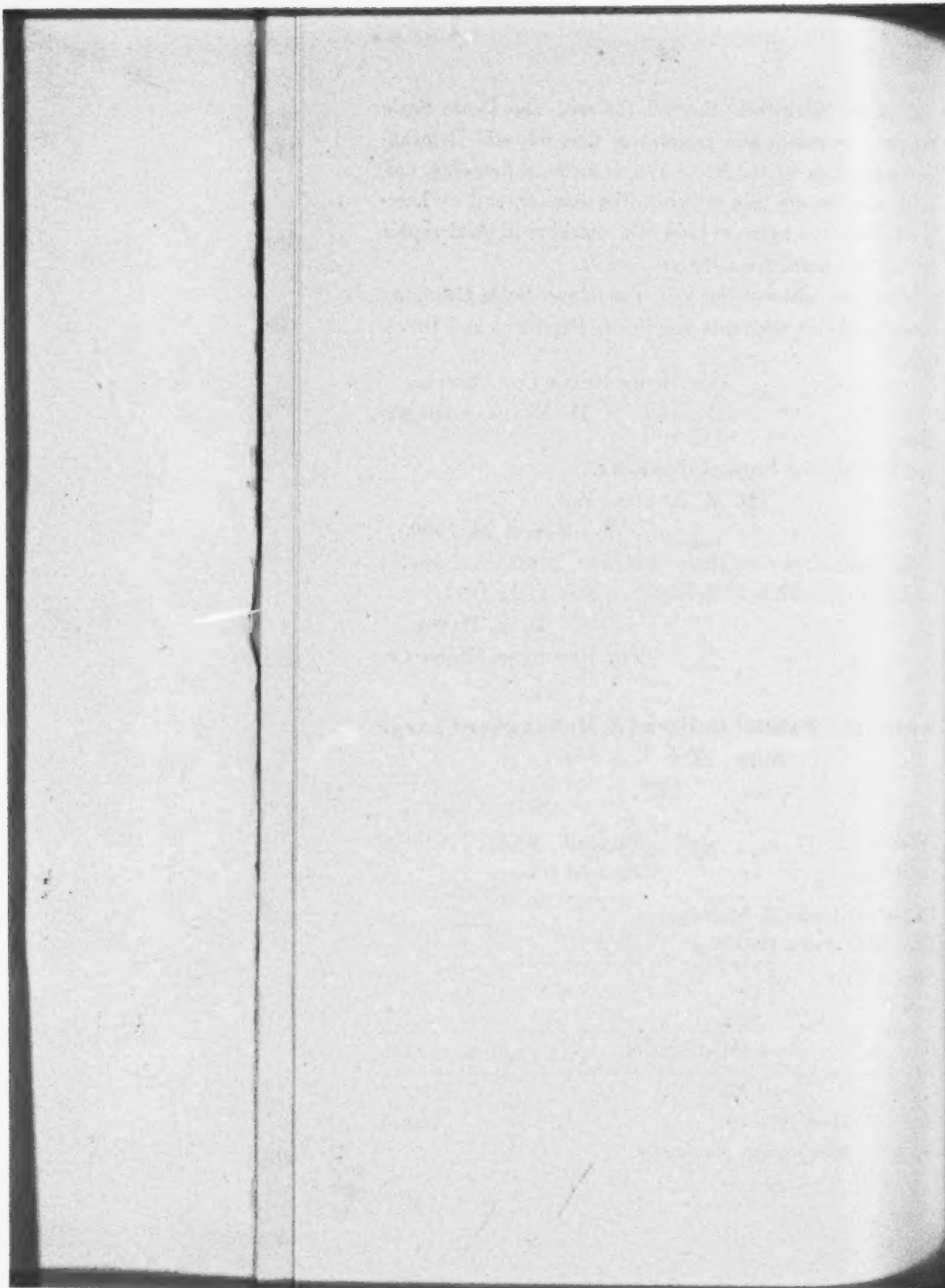
**Defendant's Exhibit Halstead & McNaugher Charge Slip.** (Vol. 1, p. 234.)

1209

Ordered..2/17..... 189 Shipped..2/17.....1898
Order No. Journal folio:

Charge Hallstead & McNaugher
Mark 1418 Park Building
Ship by City
Care

| No. | Modification. | List | Net. |
|---|---|---|---|
| | No. | | |
| No. 3 | Rem Sho 190 | | 60.00 |
| No. 5 | Remington No. 5919 | | |
| | Scorer. | | |



1466

**Defendant's Exhibit Halstead & McNaugher Invoice.** (Vol. 1, p. 226.)

---

HOWE SCALES.

Terms Net Cash.

PITTSBURG, 2/19 1898.

HALLSTEAD & MCNAUGHER,
City

Bought of THE HOWE SCALE CO.

O. B. 1209.

O. No.....

Sold By Scorer. Telephone 424. 107 Market Street.

| | | |
|---|---|---|
| 1 | #3 Rem-Sho Typewriter | 60.00 |
| | and | |
| 1 | #5 Remington in trade | |

O. K.

PITTSBURGH, PENN'A, March 1, 1898.

HALLSTED & MCNAUGHER, Dr.
To The Howe Scale Co.
Address, .. City.....

---

For 1 – Rem-Sho Typewriter #3 60.00
and
1 – Remington " #5 in trade ....

RECEIVED of Hallsted & McNaugher, Sixty & xx/100 Dollars, in full for payment of above Voucher.

Signature, THE HOWE SCALE CO.
By W. L. BEITEL.

Date, PITTSBURG 3/17, 1898.

...and Trucks of ...scription, Bag-...rrows, Skids, ...rrows, Jacks, ...sses, Howe and ...Bicycles.

...SELLING ...GENTS

...Sho.
...writer.

Scales of all Kinds Promptly Repaired.

# HOWE STANDARD SCALES,

## THE HOWE SCALE CO.

No. 107 Market Street.

S. M. EVANS, Manager.

Portable Forges, Car Movers, Push Carts, Refrigerators, Coffee Mills, also a full line of Troemer Fine Scales and Grocer's Fixtures.

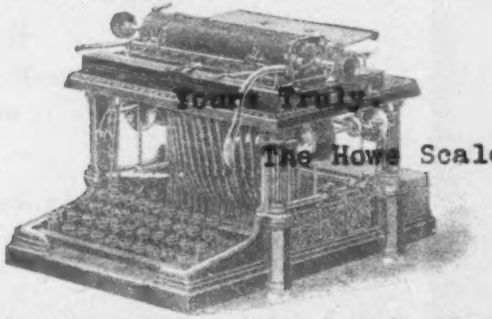
Pittsburg, Octo, 9.97.

The Remington- Sholes Co.

Chicago, Ill.

Gentlemen:-

Please ship us at once one Rem-Sho machine same as shipped us some time ago, which we believe is the number + machine and charge.



Yours Truly,

The Howe Scale Co.

P. S.

Also send us another supply of circulars as we are entirely out.

**Defendant's Exhibit Remington-Sholes Co. Letter Regarding Catalogues.** (Vol. 1, p. 231.)

---

October 11, 1897.

Howe Scale Company,
107 Market St.,
Pittsburg, Pa.

*Gentlemen:*—We beg to acknowledge receipt of your order bearing date of October 9th for one machine together with a supply of catalogues and we beg to state that the same will go out to-day.

Yours truly,
Remington-Sholes Company.
J. V. Paulsen.

(Received
Pittsburg
Oct. 12, 3 P. M.
Answered.)

**Remington-Sholes Letter Heading Pittsburg Office, marked for identification.** (C. R., Vol. 1, p. 369.)

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[This letter heading is similar to the exhibit heretofore produced and bears in addition the address of the Pittsburg office.]

**Rem-Sho Typewriter Circular Pittsburg Office, marked for identification.** (C. R., Vol. 1, p. 359.)

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[Same as Exhibit Rem-Sho Catalogue Nos. 4 and 5.]

1469

**Defendant's Exhibit Remington-Sholes Co. Pittsburg Card.** (C. R., Vol. 1, p. 357.)

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C. N. FAY, PRESIDENT
F. H. HEAD, VICE-PRES

F. REMINGTON, GEN'L MGR.
J. V. PAULSEN, SEC'Y & TREAS

REMINGTON [illegible] COMPANY

REM- [illegible] SHO

TYPEWRITER.

BRANCH OFFICE
107 MARKET STREET,
PITTSBURG, PA.

PRESENTED BY

_____

**Defendant's Exhibit Rem-Sho Indianapolis Business Card.** (C. R., Vol. 1, 343.)

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[Same as Defendant's Exhibit Remington-Sholes Company Pittsburg card, but with Indianapolis address in corner.]

**St. Paul Card of R-S Co. marked for identification, H. D. D., June 13, 1889.** (C. R., Vol. 1, p. 286.)

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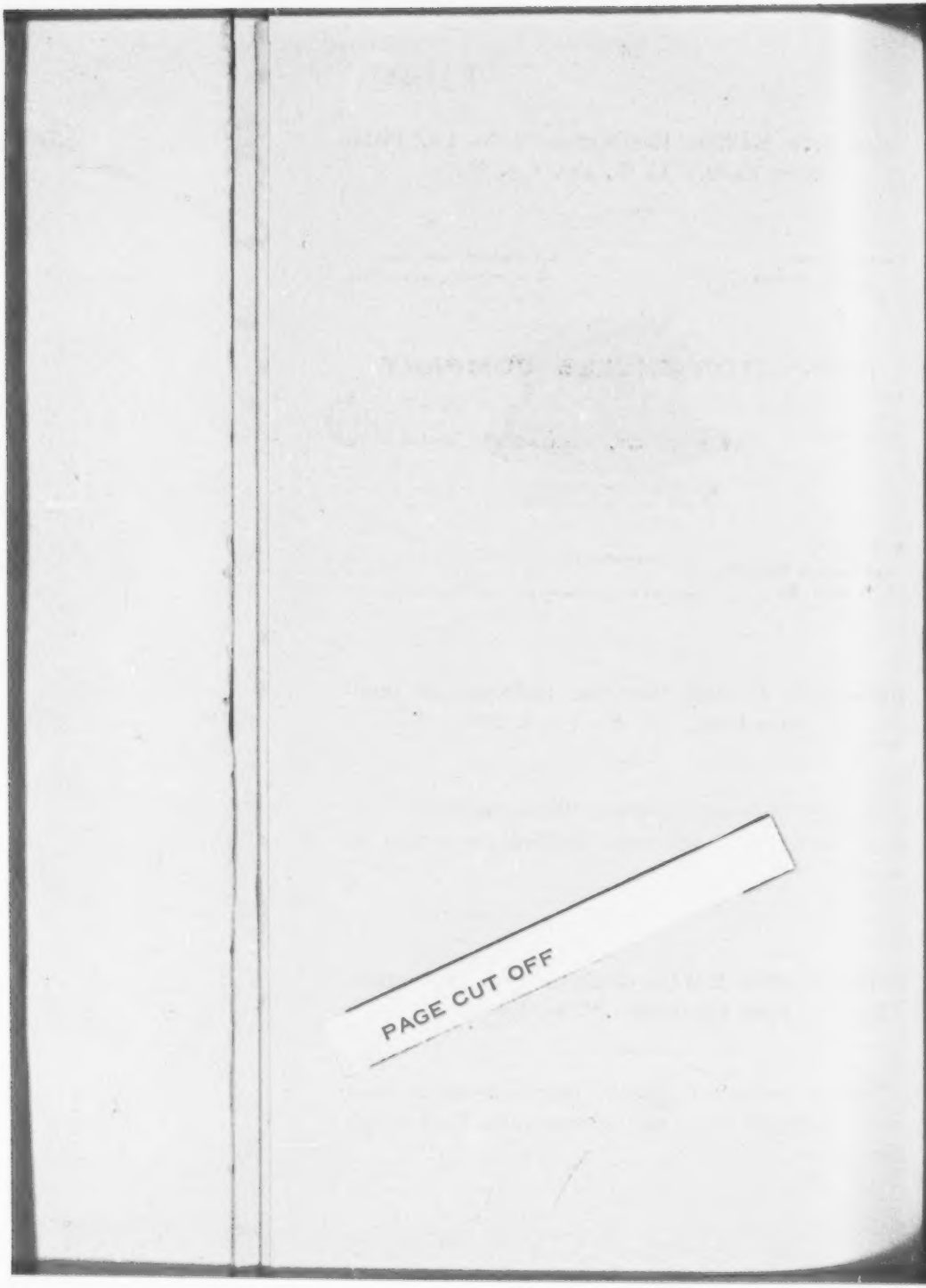
[Same as Defendant's Exhibit Remington-Sholes Company Pittsburg card, but with address of St. Paul branch office in corner.]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## EXHIBITS SHOWING COMMON USE OF THE WORD "STANDARD".

**Defendant's Exhibit United Typewriter & Supplies Co. Chicago Cards.** (Vol. 1, p. 87.)

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HIGH GRADE WRITING MACHINES.

# United Typewriter and Supplies Co.

NEW YORK PHILADELPHIA
ST. LOUIS BALTIMORE
CINCINNATI CLEVELAND
WASHINGTON DETROIT
MILWAUKEE LOUISVILLE
OMAHA KANSAS CITY
LONDON, ENGLAND

169 LA SALLE STREET,
CHICAGO, ILL.
Stationery and Supplies for
ALL STANDARD TYPEWRITERS.
All Makes Repaired.
Goods Delivered. Machines Rented

*Presented by.*

TELEPHONE, MAIN 2024.

TELEPHONE MAIN 2024

CALIGRAPH (MONOGRAM.) DENSMORE
YOST

*United Typewriters & Supplies Co.*

*Standard Typewriters*

J. F. HOBBS,
SALESMAN DIST. NO. 9

*151 Monroe Street, Chicago.*

Defendant's Exhibit Pages 9 and 92. Webster

[Page 92 of the Webster Company catalogue contains the following]:

"For the 'ODELL,' the manufacturers claim that in it they offer for sale at one fifth the price, a machine which will do the work of the so-called 'Standard' typewriters."

## Defendant's Exhibit, Page 5, Typewriter Emporium Catalogue. (Vol. 1, p. 47.)



advice, whether you *buy* of him or not. He may at least help you to *make up your mind.* Tell him what kind of service you particularly desire in a machine,—whether for hard knocks, fast work, heavy work, literary or private use, work to be done while traveling or work to be extra neat, and pleasing to the eye, and he will inform you instantly *which machine* is best adapted to your needs.

### HERE ARE SOME POINTERS

Without attempting to give a detailed description of every typewriter in use we will now tell you what should *first* be considered, when buying; then what the *secondary* matters are. In doing this we wish you to remember that we are absolutely untrammeled and without bias for or against any *one* make of machine. Please remember, also, that the TYPEWRITER EMPORIUM is not the creature of the Trust; no, nor of any manufacturer of typewriters. Don't forget *that.* We are in the market with all kinds of machines and have no ambition beyond that of making sales and *meriting your goodwill* in the future. If you will come to us, or write to us, we leave you perfectly free to make your own choice, if you have any preferences. Should you desire our advice we will give it freely, without prejudice or bias. We feel that our many years of experience handling typewriters, entitles our opinion to respectful consideration.

FIRST, then, we will say that it is always best to buy one of the *Standard* machines. There are five or six of these from which to choose, and the desirability of each must be determined chiefly by the kind of work you expect of them. Cheap, "new-fangled" machines are not good investments as a rule, no matter what the makers or owners of them may tell you to the contrary. "The best

**Defendant's Exhibit United Typewriter & Supplies Company Chicago Letter-Head.** (Vol. 1, p. 86.)

THIS IS A SAMPLE OF OUR NO. 60 "INVINCIBLE" LINEN BOND.

NEW YORK,
CHICAGO, PHILADELPHIA,
ST. LOUIS, BALTIMORE,
CINCINNATI, CLEVELAND,
SAN FRANCISCO, BUFFALO,
WASHINGTON, DETROIT,
MILWAUKEE, MINNEAPOLIS,
LOUISVILLE, OMAHA,
KANSAS CITY, ALBANY,
LONDON, ENGLAND.

UNITED TYPEWRITER AND SUPPLIES COMPANY,

DEALERS IN STANDARD TYPEWRITERS AND SUPPLIES,

OF HIGHEST GRADE.

WRITTEN ON A

TELEPHONE, MAIN 2024

151 MONROE STREET,

CHICAGO, ILL.

**Defendant's Exhibit United Typewriter & Supplies Company Omaha, Milwaukee and Cleveland Letter Heads.** (Vol. 1, p. 87.)

UNITED TYPEWRITER & SUPPLIES COMPANY,

DEALERS IN

STANDARD TYPEWRITERS AND SUPPLIES

OF HIGHEST GRADE,

No. 43 ARCADE

CLEVELAND,

Houses:
NEW YORK, DETROIT,
CINCINNATI,
KANSAS CITY, OMAHA.

WRITTEN ON A

[Omaha and Milwaukee letter-heads same as above.]

## CONCERNING ADVERTISEMENTS IN ST. AUGUSTINE HERALD.

**Defendant's Exhibit Fay's Letter to Carcaba, February 20, 1899.** (Vol. 1, p. 351.)

February 20, 1899.

Mr. Wm. Carcaba,
St. Augustine, Fla.

*Dear Sir*:—Our Mr. Seddon, who has just visited St. Augustine, sends me a copy of an advertisement which you have printed in one of the St. Augustine papers, in which, after the words, "Remember the name," you give it as follows: "The Remington-Sholes Standard Typewriter."

Now, this is not the name of our machine. Its trade marked and registered name is the "Rem-Sho." The name of our Company, which appears upon the cross bar in front of the machine is the "Remington-Sholes Company." The use of the word "Standard" in this advertisement is exceedingly objectionable to us, for the reason that it seems, when used in connection with our Company name, to be calculated to confuse the buyer as to whether he is purchasing our machine or the well known Remington Standard. Such use of the word "Standard" is not only unfair but extremely dangerous, as you are liable to be sued upon it at any time. Please discontinue it immediately, and substitute, if you wish to advertise our machine, the words "Rem-Sho Typewriter," and if you wish to identify it with our Company, you can add the words, "Manufactured by the Remington-Sholes Company, Chicago."

A suit is already pending brought by Messrs. Wyckoff, Seamans & Benedict against the Howe Scale Company, raising this very point of deception of the public by one of our agents, which we never intended and have always guarded carefully against. For your own protection as well as ours, we beg that you will make the correction promptly, and if you have sold any machines or invoiced them as "Remington-Sholes Standard" machines, we beg that you will let us know the facts in detail, as they may be of vital importance in the suit now pending.

Yours truly,
(signed) C. N. Fay,
Prest.

N. S.

P. S. I trust that this request will occasion you no inconvenience. I would have made it long ago had I known the facts. I also trust that our business relations will be profitable and pleasant to which end we will aid you in any way in our power.

(signed) C. N. Fay.

**Defendant's Exhibit Carcaba Letter and Advertisement, March 2, 1899.** (Vol. 1, p. 351.)

---

P. F. Carcaba & Co.
Manufacturers of
Havana Cigars.

St. Augustine, Fla., Mar. 2, 1899.

Remington-Sholes Co.
Chicago, Ill.

*Gentlemen:* Your favor of the 20 ult. to hand and contents noted. In reply to same wish to state that I have changed the wording of the advertisement which you refer to, having it to read as you suggested. I herein enclose a copy as it now appears. Trusting to continue our pleasant business relations I remain,

Yours respectfully,

Wm. Carcaba.

**Defendant's Exhibit Fay's Letter to Carcaba, March 6, 1899.** (Vol. 1, p. 351.)

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Mr. Wm. Carcaba, March 6, 1899.
St. Augustine, Fla.

*Dear Sir*:—I beg to thank you very cordially for your letter of March 2nd with the enclosed clipping and information of the change in your advertisement.

Yours truly,
(signed) C. N. Fay,
Pr.

N. S.

## EXHIBITS RELATING TO PHILIPS' NEW HAVEN TRANSACTION.

**Defendant's Exhibit Platt Acknowledgment of Rem-Sho Machine.** (Vol. 1, p. 415.)

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THE MANHATTAN TYPEWRITER.

Typewriter Supplies,
Ribbons,
Linen Paper, Carbon Paper
Copy Holders, etc.

[Cut of Machine.]

Typewriters for Rent.
Stenographers Furnished.
Typewriters Repaired.

Joseph E. Platt,
Gen'l Agent for
New Haven, Hartford,
Fairfield and Litchfield Counties,
27 Center Street,
New Haven, Conn.

Dec. 5, 1899.

Remington-Sholes Co.,
#127 Rees St.,
Chicago, Ill.

*Gentlemen*:—I received your bill for $57.50 for one Rem-Sho typewriter and cover which was sold us by your agent and which was received by us on Nov. 9. The agreement with your agent was to pay for this particular machine, sixty days after its receipt at our office which would make the date of payment Jan. 9.

Will you please instruct your bookkeeper to make the necessary entries to correspond with these dates, and very much oblige.

Very truly yours,
(Signed) JOSEPH E. PLATT.

**Defendant's Exhibit Platt Order for Rem-Sho.**
(Vol. 1, p. 371.)

R. S. Co. Agency Form 195, 5m. Customer's Order.

REMINGTON-SHOLES COMPANY,
127 Rees St., Chicago.
Agency at Chicago, Illinois,

Dated Oct. 21, 1899.

TO THE REMINGTON-SHOLES COMPANY,
127 Rees Street, Chicago, Ill.

Please ship to the undersigned, via.
marked Jos. E. Platt,
New Haven, Conn.
the following articles:

Date Nov. 1, 1899.

1 No. 4 Rem-Sho Typewriter Pica type 55,00
Metal Cover and Baseboard, Rubber Cover.
Line Lock & ordinary escapement.
Exchange Credits.
Catalogues, advertising,
ex. list, etc. etc.

Net,

F. O. B. Chicago, which I agree to pay for as follows:
Purchase price $55,00
Terms: Net 60 days per cent off for cash, days from receipt of goods,
agree to execute the Company's usual contracts for property leased or to be paid for in installments.

Signed JOSEPH E. PLATT.

## CORRESPONDENCE SHOWING EFFORTS OF COMPLAINANT'S DETECTIVES TO ENTRAP DEFENDANT.

**Defendant's Exhibit Brooks & Co. Letter.** (Vol. 1, p. 114.)

BROOKS & CO.,
GENERAL IMPORTERS.

JAMAICA, W. I., July 12, 1898.

JAS. A. HOOD, ESQ.,
Baltimore, Maryland, U. S. A.

*Dear Sir:*—Since our last advises to you on the subject of writing machines we have received the requisition of the Depart. of Justice of the Island District, authorizing us to furnish them with a writing machine. The specification calls for "One (1) writing machine, of the style Remington, with cover of tin and wooden bottom."

We have as yet had no advices from you in response to our last communication on the subject of writing machines and not knowing what action you may have taken will not attempt specific instructions so far as the filling of this order is concerned. If you have consummated an arrangement with the manufacturers you are at liberty to forward the machine with next shipment in usual course, well wrapped. Type like last sent.

We shall write you further regarding other matters by later post.

Very truly yours,

BROOKS & CO.

ASTOR HOUSE, N. Y. N. Y., July 28/98.

HOWE SCALE CO.,
Phila., Penn.

Referring to letter 19th regarding typewriters, above letter just received. Am inclined to ship your machine on this order if you bill so as to cover language of specification. If so, prepare machine and mail me invoice and measurements *at once* to Astor House, N. Y. Will send shipping directions accompanied by check, less cash discount within few days. Be particular to make out bill "of the style Remington" etc.

Hastily,

JAS. A. HOOD.

Return above letter with bill.

as found



**Defendant's Exhibit Scheum**
**17, 1898.** (C. R.

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AETNA LIFE INSURAN

HARTFORD, CONN

MESSRS. PAGE, DENNIS & Co.,
341 Broadway, New York Cit

*Gentlemen*:—Referring to my
ago, and to which I have to say I
a reply—I shall be much oblig
diately, and also to receive a supp
etc.

Confident that I would receive
the 10th inst. and also the advertis
ahead and drummed up several pe
them the Secretary of another Insu
using quite a number of machines,
of an order, and I told him that I
from you in a very short time, and
for the machine, would order it r
time flew on and your answer cam
he came to me and said that it wa
have the machine right away, so I
order over to the Remington peopl
this because as yet I have no auth
this territory; so you see by a conti
tion, while I will not be losing an
had the authority to sell, I might g
dollars in the course of a year—pos
hear from you so soon as practical
you that I intend to have my share
ness that moves in this town notwith
the Smith-Premier people think they
ing the last six months two or three
lished offices here on the agency pl
they are offering are fourth class an
tion, while you have a good machine
allow it to lie dormant. I hope to h
turn mail and would also thank you
willing to take old Smiths, Remingt
Caligraphs in exchange allowing th
trade.

Yours very tru
(Signed) W.

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**Defendant's Exhibit Scheumaker Letter November 16, 1898.** (C R., Vol. 1, 184.)

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AETNA LIFE INSURANCE COMPANY,
HARTFORD, CONN., Nov. 16, 1898.

REMINGTON-SHOLES COMPANY,
341 Broadway, New York City.

*Mr. G. A. Baldwin*:—I beg to acknowledge receipt of your favor of the 2nd inst. announcing that you had telegraphed your Mr. Seddon who was at that time in Hartford to call on—which he did, and you undoubtedly have been informed of the result of said interview.

The main reason why I declined to purchase a machine (and thus secure the agency) was owing to the fact that to all appearances it is your intention to "hash" the State up; as Mr. Seddon informed me you had an office in Newhaven, one in Bridgeport and another in Meriden "hanging fire," and whereas, you promised me the whole State.

I have now seriously discussed the matter, and will say, that if *you will give me a written agreement to the effect* that after I demonstrate my *selling abilities*, and I deem it a wise course to give up my present business and go into the typewriter business entirely, you will give me the control of the *whole State* and I can establish offices where I deem it advisable, and where I can wage a most successful war against the "Trust" which you are so determined to fight, and which I am just aching to do myself—I have a few personal affairs to settle myself, and it would do me more good than a bushel of medicine to clear them out of this city or worry them a good deal by placing a machine superior to theirs in the hands of concerns which they are bleeding continuously; you may send me one of your machines on a thirty (30) day trial, as per the offer of your Mr. Seddon when here, I to pay for it at the end of that time or return the machine—and you can rest assured

1460

that after I give the machine a thorough trial you will be sent a check therefor; and I will immediately take up the agency here, and begin the campaign against the "Trust." Of course you will supply me with a goodly amount of advertising matter, etc., and write me a letter and tell me what new points have come to light, and upon what points I can enlarge upon so as to bring the machine before the public eye in a propitious light. You have a good thing and as far as I am concerned I see no reason why people shouldn't have the advantage of it.

That point which Mr. Seddon told me about—selling one hundred and thirty machines to the Government will certainly be a big advertisement to you, and I wish to congratulate you upon your success in securing the order in open competition with the other makes of typewriters. It certainly shows that Uncle Sam knows a good thing when he sees it. Can I use this as a selling point? Write me a letter giving the weak points in the Underwood, Remington, Densmore. The Smith Mr. Seddon gave me a few points which will work to my advantage, but it will do no harm to give me some more of the weak points of it.

Write me a letter giving me a history of the typewriter. Write me a letter giving me a history of the "Rem-Sho," and say as to whether I can advocate this machine as the only "Remington," and that the machine known as the "Remington Standard" is not the Remington—that is the original Remington. Give me all facts and figures, and if we don't show the "Trust" that we are the "people" in this section, we'll go out of business. I am just itching to get down to business—your machine I feel has come to stay—it is built on sound principles—like sound money—it has a solid foundation—and an effect for every cause, and a reason for every cause,—this is the machine for me. When, if you decide to award me the agency and comply with the above, and ship me a machine on thirty days trial, put on a "medium speed dog," as I am an extremely rapid operator when I get accustomed to the touch.

1481

Hoping to hear from you favorable, Gentlemen, by return mail, and for the long life and success of the "Remington-Sholes," I am, Dear Sir,

Yours very truly,

(Signed) WALTER MONTGOMERY SCHEUMAKER.

SCHEUMAKER CORRESPONDENCE—LETTER NO. 12.

NOVEMBER 19, 1898.

MR. W. M. SCHEUMAKER,

Care Aetna Life Insurance Company,

Hartford, Conn.

*Dear Sir:*—Your letter of the 16th has been awaiting my return for attention. In reply beg to state that I can only reiterate my remarks while in Hartford, viz.; That you will have to purchase a machine as a sample, and if you do this we will give you a discount that would naturally fall to an order of 10 machines, viz. 35%, 30 days, or 5% extra for cash.

Our machine is not known as the Remington Standard or have we any connection with the Remington Standard Typewriter, our machine is known as the Rem-Sho, manufactured by the Remington-Sholes Co. Regarding a history of our machine, you will find it embodied in the catalogue which we send you under separate cover.

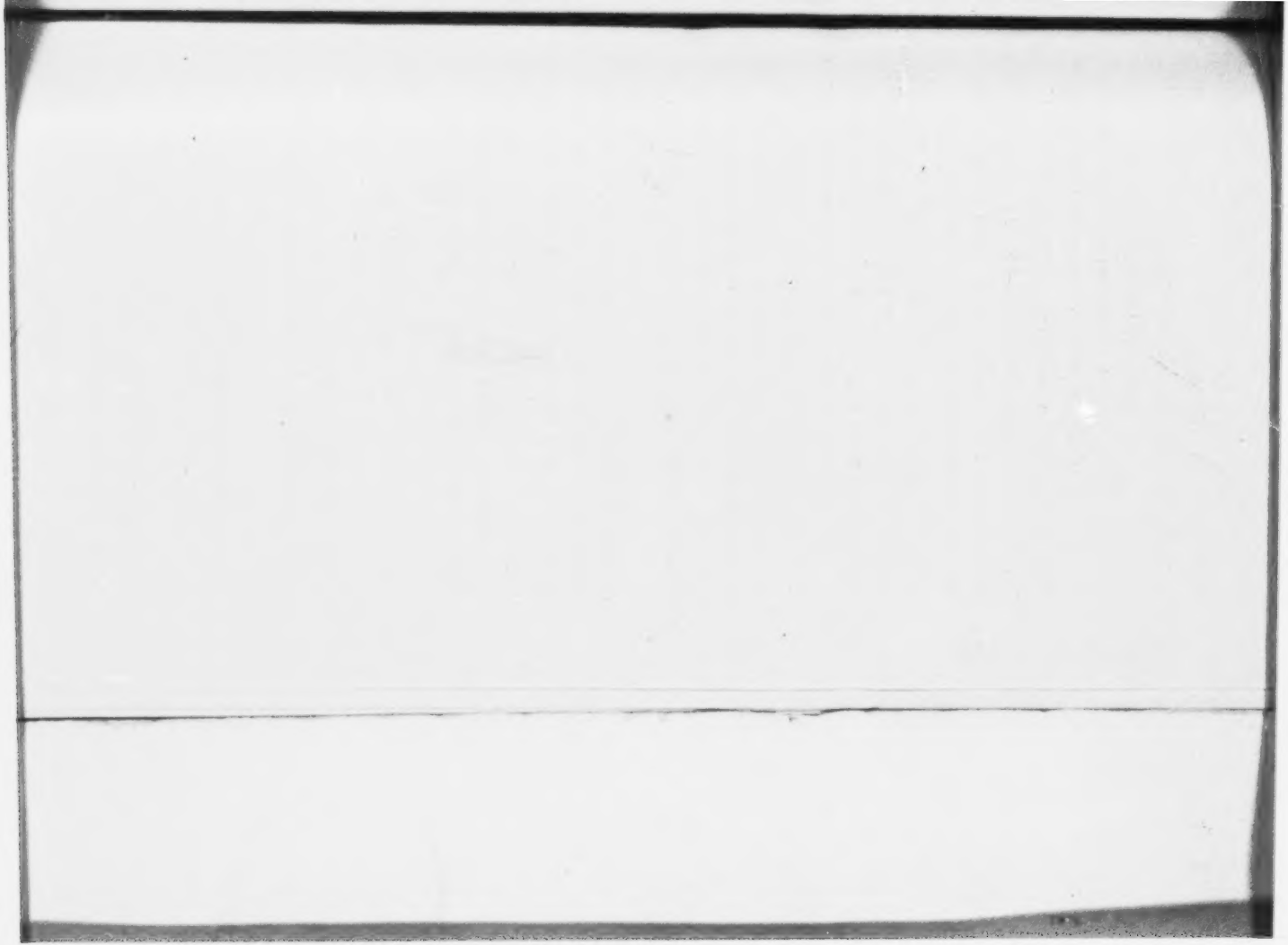
If you should comply with the former portion of this letter, and purchase a machine as a sample, we would give you a contract as exclusive dealer for our machine at Hartford; further territory we could not give you at this writing, and could not hold out an inducement to give you the entire State of Connecticut, for an indefinite future, but if you prove successful in Hartford, we may be tempted to gradually increase your radius of territory.

Would be pleased to hear from you,

Yours very truly,

REMINGTON-SHOLES COMPANY,

(Signed) S. J. SEDDON.



**Defendant's Exhibit Johnson Unsigned Statement.** (Vol. 1, p. 176.)

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WASHINGTON, D. C., April 6, A. D., 1900.

FRANK L. SHOLES, ESQ.,

Washington, D. C.

*Dear Sir:*—Confirming our conversation of yesterday, I wish to make the following statement in fairness to all parties, viz:

For many years past I have been familiar with the well-known Remington typewriter manufactured by Wyckoff, Seamans & Benedict, and during such time have extensively used such machine in my work as a stenographer in the House of Representatives.

I was never led to believe that the Remington-Sholes machine was the same as the Remington, or was manufactured by the same parties who manufactured the Remington. I never told any one that I ever supposed that such were the facts. I have had too many years experience with typewriter machines to have made any such mistake. I placed a trial order for a Remington-Sholes machine knowing that it was not the same as the Remington and not made by the same people. I canceled the order for the Remington-Sholes machine simply because they had furnished me with a second-hand machine, the operation of which was not satisfactory.

Very truly yours,

**Defendant's Exhibit Specimen of Romig's Handwriting.** (Vol. 1, p. 135.)

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[Reproduction unnecessary in view of stipulation.]

Defendant's Exhibit Clement & Clement Letter-Heading. (Vol. 1, p. 305.)

Ask for the "Eagle Brand" of Typewriter Ribbons and Carbon Papers.

The Addressograph,
The Rotary Neostyle.

Typewriters:
The Underwood,
The Rem-Sho.

HIGH GRADE
TYPEWRITER
SUPPLIES
AND REPAIRS.

TELEPHONES:
OFFICE: MAIN 2065
FACTORY: MAIN 3170

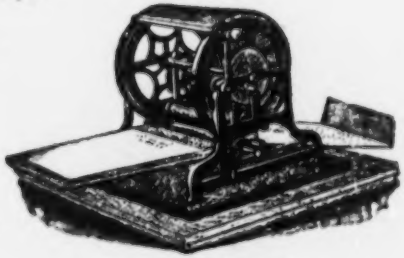
# Clement & Clement

IMPORTERS AND MANUFACTURERS

OFFICE:
Street Railway Chambers,

FACTORY:
613 Lagauchetiere St.

Montreal, Can.



THE ROTARY NEOSTYLE.

40

Defendant's Exhibit R.-S. Catalogue, F. A. J. 2. (Vol. 1, p. 306.)

[This is same as Rem-Sho catalogue Nos. 4 and 5.]

1493

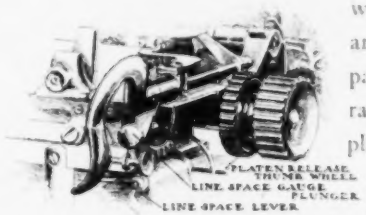
Defendant's Exhibit Illustrations of New Century Typewriter Model, Nos.5,6 and 7.
(Vol.1,p.434.)

THE NEW CENTURY TYPEWRITER

A lever on the right of the carriage serves the double purpose of drawing the carriage to the right and at the same time making the line spacing.

## The Line Spacing

Projecting from the lever, and near the frame, is the line space gauge plunger, from which a pin springs into one of three holes in the carriage frame. These regulate the line spacing. Setting the pin in the right hole gives one line space, in the center hole two, and in the left hole three line spaces. This supplies all the variety in line spacing usually required, but it is often necessary to write on ruled or partially ruled forms in which the spacing is not the same as the regular spacing of the machine, and for this purpose the platen release has been provided. On the right end of the carriage, between the platen thumb wheel and the platen, is the platen release thumb wheel. By holding the left platen thumb wheel, and giving the platen release thumb wheel a partial turn, the platen is released from the platen ratchet wheel and may be moved freely. The platen can then be turned by either thumb wheel, and any line on the paper, ruled or otherwise, can be brought to the printing point, which is indicated by the grooves on the adjustable paper guides. In this way any line spacing can be used, as the occasion may require. Particular attention is called to the fact that the relationship between the line space pawl and the platen ratchet is the same whether the platen is released or not. When the operator desires to return to regular line spacing, the completion of the partial turn given to the platen release thumb wheel restores the connection of the platen and platen ratchet wheel, thereby *eliminating all uncertainty as to the spacing*. It will be absolutely regular and exact from the moment the connection is restored.



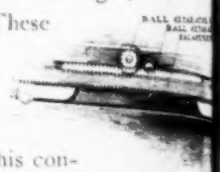
carriers to which the shield is attached are provided with rollers on which the ribbon travels. There is no friction and consequently no drag. After a ribbon is once put on the New Century, it requires no further attention until it is worn out.

## The Carriage

The carriage is necessarily one of the most important features of a writing machine. It must run easily and at the same time run true. It must be light, to be easily handled. It must be strong, to withstand hard usage. There should be no side or end play or lost motion anywhere, otherwise good alignment is impossible. All these requirements have been successfully met in the carriage of the New Century.

The carriage is made of aluminum silver and is light and very strong. It is attached to the carriage carrier by means of two strong lugs, and is firmly fastened in place by lock collars. When the collars are in position the carriage is as firm and rigid as any part of the machine, and yet its travel is as light as any one could wish. It is carried on a roll in front.

The carriage carrier is grooved on the upper and lower edges, and these grooves face similar grooves in the ball-race rails. These rails are mounted on standards attached to the top plate of the machine, the carrier traveling between the rails with two balls in the lower and one ball in the upper channel, thus forming a "tripod" bearing. This construction permits the use of the separator, by which these balls are kept in the same relative position to each other. A double gear wheel, attached to the center of the upper rail at the rear, maintains an absolute relationship between the ball separator and the spacing rack, so that the support and action of the ball bearings of the carriage are the same, no matter where the carriage may be. This is an exclusive New Century feature of great value.



Deft'

Deft's Ex.Remington-Sholes Co.Registration of Trade Mark Rem-Sho.
(Vol.1,p.350.)

TRADE-MARK.

—o—

REMINGTON-SHOLES COMPANY.
TYPE WRITING MACHINES.

No. 30,719. Registered Oct. 19, 1897

# REM-SHO

# UNITED STATES PATENT OFFICE.

REMINGTON-SHOLES COMPANY, OF CHICAGO, ILLINOIS.

## TRADE-MARK FOR TYPE-WRITING MACHINES.

STATEMENT and DECLARATION of Trade-Mark No. 30,719, registered October 19, 1897.

Application filed August 27, 1897.

### STATEMENT.

*To all whom it may concern:*

Be it known that the REMINGTON-SHOLES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and having its principal place of business in Chicago, in said State, has adopted for its use a Trade-Mark for Type-Writing Machines, of which the following is a specification.

The said trade-mark consists of the arbitrary word "Rem-Sho." This word "Rem-Sho" has generally been marked as a hyphenated word, as shown in the accompanying facsimile, but the hyphen may be omitted and the style and color of the lettering may be varied without altering the character of the trade-mark, the essential feature of which is the word "REM-SHO."

This trade-mark has been continuously used by the REMINGTON-SHOLES COMPANY since about the 1st day of July, A. D. 1897, upon type-writing machines manufactured and sold by it.

The said trade-mark is usually affixed to the goods by marking the word "Rem-Sho" in plain letters upon the type-writing machines or upon the boxes and cases wherein said machines are packed and shipped.

The class of merchandise to which this trade-mark is appropriated is printing-machines, and the particular description of goods comprised in such class on which it is used is type-writing machines.

REMINGTON-SHOLES COMPANY,
By CHARLES NORMAN FAY,
*President*

Witnesses:
JAMES H. PEIRCE,
ALBERTA ADAMICK.

### DECLARATION.

State of Illinois county of Cook ss.

CHARLES NORMAN FAY being duly sworn deposes and says that he is the president of the REMINGTON-SHOLES COMPANY, the corporation named in the foregoing statement; that he verily believes the foregoing statement to be true; that at this time the said REMINGTON-SHOLES COMPANY has a right to the use of the trade-mark therein described; that no other person, firm or corporation has the right to such use, either in the identical form shown or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by the said REMINGTON-SHOLES COMPANY in commerce between the United States and foreign nations and particularly in commerce with the Empire of Germany; that the description and facsimile presented herewith for record truly represent the trade-mark sought to be registered.

CHARLES NORMAN FAY.

Sworn to and subscribed before me, at Chicago, Illinois, this 4th day of August, A. D. 1897.

[L. S.] ALBERTA ADAMICK,
*Notary Public, Cook county, Illinois.*

Defendant's Exhibit Standard Typewriter Manufacturing Company
Trade Mark No.15,376. (C.R.Vol.1,p.82.)

# STATES PATENT OFFICE.

MANUFACTURING COMPANY, OF NEW YORK, N. Y.

K FOR TYPE-WRITING MACHINES.

LARATION of Trade-Mark No. 15,376, registered April 17, 1888.

Application filed February 25, 1888.

## STATEMENT.

*To all whom it may concern:*

Be it known that the STANDARD TYPEWRITER MANUFACTURING COMPANY, a corporation organized under the laws of the State of New York, and having its factory at Ilion, Herkimer county, New York, and its principal place of business in the city of New York, has adopted for its use a Trade-Mark for Machinery, of which the following is a full, clear, and exact description.

The trade-mark of said corporation consists of the arbitrary symbol—to wit, the semblance of a large circular paper seal such as is sometimes employed and attached to written instruments or documents of a governmental or official character, and having numerous and relatively-shallow notches on its margin, and bearing the semblance of an impression, which impression includes a border-line just inside the notches, and within said border the words "To Save Time is to Lengthen Life" and the word "Standard." Said words "To Save Time is to Lengthen Life" have generally been arranged in the arc of a circle at the top of the space inclosed within the border and the word "Standard" beneath the foregoing words. The border has usually contained, in addition to the words mentioned, a print or cut representing a type-writing machine, together with other words.

In order that the trade-mark may more accurately represent a documentary or official seal, it has generally been printed in red, with the border and words representing the impression of a stamp thereon left white or of the color of the paper or other material on which the seal is printed; but the trade-mark may be of any other color than red. The words and border-line may be omitted or changed at pleasure without material alteration of the character of the trade-mark, the essential feature of which is a circular disk-shaped mark having circumferential notches, so as to represent an official seal.

The trade-mark has been continuously used by said corporation since about March, 1886, and by their predecessors (E. Remington & Sons, whose entire right, title, and interest in the type-writer business they now hold by purchase) since the fore part of 1881.

The class of merchandise to which this trade-mark is appropriated is machinery, and the particular description of goods comprised in such class on which it is used by the said corporation is type-writing machines.

It has been the practice to print said trade-mark upon letter and bill heads and upon circulars employed in the business as manufacturers of type-writers. It is the intention to apply the same directly to articles of merchandise of this class by the process or method known as "decalcomanie." In its application to machines, however, said trade-mark may consist of a piece of paper cut and arranged to the form described and pasted or otherwise fastened to any part of the machine.

STANDARD TYPEWRITER MFG. CO.,
By C. W. SEAMANS,
*Secretary.*

Witnesses:
I. C. SEAMANS,
W. F. BOGART.

## DECLARATION.

State of New York, county of Kings, ss:

C. W. SEAMANS, being duly sworn, deposes and says that he is secretary of the corporation the applicant named in the foregoing state-

commerce between the United States and foreign nations or Indian tribes, and particularly with England, and that the description and facsimiles presented for record truly represent the trade-mark sought to be registered.

# ...TATES PATENT OFFICE.

## ...MANUFACTURING COMPANY, OF NEW YORK, N. Y.

## ...K FOR TYPE-WRITING MACHINES.

...LARATION of Trade-Mark No. 15,376, registered April 17, 1888.

Application filed February 25, 1888.

### STATEMENT.

*To all whom it may concern:*

Be it known that the STANDARD TYPEWRITER MANUFACTURING COMPANY, a corporation organized under the laws of the State of New York, and having its factory at Ilion, Herkimer county, New York, and its principal place of business in the city of New York, has adopted for its use a Trade-Mark for Machinery, of which the following is a full, clear, and exact description.

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It has been the practice to print said trade-mark upon letter and bill heads and upon circulars employed in the business as manufacturers of type-writers. It is the intention to apply the same directly to articles of merchandise of this class by the process or method known as "decalcomanie." In its application to machines, however, said trade-mark may consist of a piece of paper cut and arranged to the form described and pasted or otherwise fastened to any part of the machine.

STANDARD TYPEWRITER MFG. CO.,
By C. W. SEAMANS,
*Secretary.*

Witnesses:
I. C. SEAMANS,
W. F. BOGART.

### DECLARATION.

State of New York, county of Kings, ss:

C. W. SEAMANS, being duly sworn, deposes and says that he is secretary of the corporation the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that said corporation has at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has a right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by said corporation in commerce between the United States and foreign nations or Indian tribes, and particularly with England, and that the description and facsimiles presented for record truly represent the trade-mark sought to be registered.

C. W. SEAMANS.

Sworn and subscribed before me this 21st day of February, 1888.

[L. S.] WM. F. LETT,
*Notary Public for Kings Co.*

FOLD OUT IS TOO LARGE TO BE FILMED

Defendant's Exhibit C.L.Sholes Patent of 1878.

UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

| | |
|---|---|
| WYCKOFF, SEAMANS & BENEDICT<br>vs.<br>THE HOWE SCALE CO. OF 1886. | In Equity. |

E. Remington & Sons, a corporation of New York, of 1865, made and sold fire arms; it began to make and sell type-writers as a branch of its business in 1873, which became well and favorably known and were marked as Remington machines. The plaintiff, then a partnership, now a corporation, of New York, became the selling agent of these typewriters, which were largely advertised and introduced by that name in this and foreign countries, and acquired and maintained a good reputation for style and workmanship. In 1886 the plaintiff bought out the typewriter business, including franchises and trade marks, and has continued and largely increased the manufacture and sale of the Remington machines by that name.

In 1893 Zalmon G. Sholes got up a machine called the "Z. G. Sholes" typewriter, and a corporation of Illinois was organized to make and sell it, called the Z. G. Sholes Company. Carver Remington and Franklin Remington of Chicago acquired an interest in the corporation and business, and the name of the machine was changed to "Remington-Sholes," and in 1894 the name of the corporation was changed to "Remington Sholes Typewriter Company." This company has made, advertised and extensively sold those machines in this and foreign countries by the name "Remington-Sholes" in full, or "Rem-Sho,"

an abbreviation of it, and placed one or the other prominently upon the machines.

The defendant, the Howe Scale Company of 1886, is a corporation of Vermont, and has been and is a sales agent of these machines to a large extent for the Remington Sholes Company and so has prominently participated in this use of the name Remington, and this abbreviation of it in this business in this manner.

This suit is brought for that participation; the defendant justifies under the Remington-Sholes Company, and that company has assumed the defense of the suit and the validity of the defense depends upon the right of that company to so take and use the name "Remington" upon its machines.

Several questions in the case have been made by motion to suppress evidence and have been brought into the final hearing. They relate principally to testimony taken in rebuttal as not properly such; to testimony as to the use of the name in business correspondence and transactions not shown to have emanated from the defendants; and to testimony showing the use of the name upon and in connection with the sale of typewriters in foreign countries.

Perhaps some of the testimony taken in rebuttal is not strictly such, but is rather cumulative; still it is such as would be admissible if taken at the proper time, or with leave, and as the motion has been brought along by consent to the hearing in chief, and the testimony might be the subject of a motion to retake, without intending to relax the rule as to order, it is deemed best under the circumstances that this testimony be left to stand for what it is worth.

The evidence relates to machines emanating from the party under whom defendant has acted and justifies, with the name in question upon them as placed here by that party, and evidence as to transactions in respect to such machines in connection with and relation to the plaintiff's machines and names in trade, although not proceeding directly

from that party, or from the defendant, or authorized by either, appears to be admissible as a part of the *res gestæ* for the purpose of showing the effect upon the plaintiff's trade of putting these other machines into the market with the name in question upon them.

As this is a suit for interference in trade, the boundaries of the dealing and not of governments or countries is material. There is said to be a difference between the laws of this country and those of some of the countries in question; but the laws of those countries would not govern or vary the rights of parties here in respect to transactions emanating from here, although carried out there. The motion to suppress is therefore overruled.

The intricate and delicate machinery of typewriters requires good materials and nice workmanship, and their reputation depends largely upon the quality of their manufacture. The Remington typewriter was among the pioneers and one of the foremost in reputation for good construction. That the introduction to the markets of another machine with that name upon it, at the time when the Remington-Sholes machine appeared, would make confusion in the plaintiff's trade and tend to pass off the new machine for the regular Remington machines of the plaintiff needs no proof, but the circumstances that it actually did have that effect well appeared from the evidence. That was what the taking of the name was calculated to do, and what was to be expected. The ultimate purchasers would be led to think that the addition of the name "Sholes" was a new style of the old machine coming from the same source.

Upon the well established principles that one has no right to push his wares as those of another, this would ordinarily be an actionable wrong at law, repetition of which to save multiplicity of suits for repeated wrongs would be restrainable in equity.

That these Remingtons are descendants of one of the original Remingtons, and Sholes a descendant of

an inventor of some part of the original typewriters, is set up and relied upon as establishing a right to the use made of the names "Remington-Sholes" in this connection. No right descended, however, in those respects from any of these ancestors to any of these persons; and this excuse has no legal foundation, but is entirely sentimental. They were situated as to this as any other party of the same name would have been, with no standing but their own natural rights to the use of their own name in the transaction of their business.

That all persons have respectively the right to use their own names in their own business is entirely clear, but this right is subject to the limitations common to all rights, that it is to be so used as not to injure the rights of others.

These Remingtons were not themselves manufacturers of typewriters, and did not start is as nor become such in their own names, nor have their own names put upon machines of their own make; but they gave their name to a large corporation as a distinct entity, which took the name into its typewriter business and put it upon the machines of that corporation, whereby they undertook to confer the right to the use of that name upon that entity for the benefit of others, who had no right to use it at all. This was not a legitimate exercise of the natural right to use their own name in their own business; but was an attempt to exercise a fictitious right to use the name in, to a great part, others' business. This was going far beyond their own rights, and was an undertaking to give what they did not have, and their own natural right to the use of their own name in their own business became thereby so mingled with the unlawful use of it for the benefit of others that it is indistinguishable here. They lost their identity in that of the corporations.

Connecting the name "Sholes" with Remington in the business, and on the machines, would not or might not adequately indicate to a purchaser who had known or heard of the Remington typewriters,

and wanted one, that these were not original Remingtons such as were wanted. The name, although linked with Sholes, would indicate Remington connection in typewriter production and imply the original manufacture.

This use of the name "Remington," although done in such connection, appears to be an unjustifiable invasion of the right to that name belonging to the plaintiff.

The long name, Remington-Sholes, got shortened into Rem-Sho in writing and speech in conducting the defendant's business, which was well understood to be an abbreviation of the full name. The defendant has put the abbreviation upon the machines in place of the full name; and claims that this, at least, is so different from the name Remington as used by the plaintiff and its predecessors, that it can, and does, not amount to any representation that the machines are Remington machines. If this short name had been the one first used there would be much plausibility in this argument; but following Remington-Sholes as it has in use it has become a well known short representation of what the long name it stands for represented, and of itself now amounts to a wrongful representation of the source of the defendant's machines.

According to these views the plaintiff appears to be entitled to a decree suppressing the use of the name Remington in the compound name of "Remington-Sholes," and the use of the compound abbreviation of that name upon the defendant's typewriting machines, or in the sale thereof.

Decree for plaintiff.

HOYT H. WHEELER.

WILDER L. BURNAP,
H. D. DONNELLY,
CHARLES E. MITCHELL,
For Plaintiff.

BUTLER & MOLONEY,
JAMES H. PIERCE,
GEO. P. FISHER, Jr.,
For Defendant.

UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

| | |
|---|---|
| WYCKOFF, SEAMANS & BENEDICT, Complainant, vs. THE HOWE SCALE COMPANY OF 1886, Defendant. | In Equity. |

The motion heretofore submitted on defendant's behalf by Messrs. Pierce & Fisher, its attorneys, to suppress certain of complainant's depositions and parts thereof as specified by the motion papers now on file, having been argued by counsel for the respective parties and duly considered, the Court being fully advised in the premises, doth hereby overrule said motion to suppress said evidence.

Done in Court this 28th day of May, 1901.

HOYT H. WHEELER,
Judge.

At an Equity Term of the Circuit Court of the United States in and for the District of Vermont, held at Windsor, in said District, on the 3d Tuesday of May and on the 14th day of August, a day in said Term, 1901.

Present—Hon. HOYT H. WHEELER, *Judge*.

UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

| | |
|---|---|
| WYCKOFF, SEAMANS & BENEDICT<br>vs.<br>THE HOWE SCALE COMPANY OF 1886. | In Equity. |

This cause coming on to be heard upon the pleadings and proof and after hearing Messrs. Henry D. Donnelly and Charles E. Mitchell, counsel for the complainant, and James H. Peirce and Geo. P. Fisher, Jr., counsel for the defendant, and due deliberation having been had thereon, it is ordered, adjudged and decreed, and the Court doth hereby order, adjudge and decree as follows, namely:

1. That since about the year 1873 the complainant and its predecessors have been engaged in the manufacture and sale of typewriting machines which became well and favorably known and were marked and designated as "Remington" machines.

2. That said writing machines were put upon the market by complainant and its predecessors and introduced, advertised for sale and popularized in this country and in foreign countries under the name of

"Remington" and "Remington Typewriter," by which names they came to be widely known and identified by purchasers and the public, and which before the acts of the defendant and its principal "Remington-Sholes Company" in the bill of complaint mentioned, had for many years been continuously and exclusively used to designate and identify complainant's machines.

3. That prior to the acts complained of the complainant acquired and succeeded to the typewriter business founded by E. Remington & Sons, including franchises, trade-marks and good-will thereof, and said business of manufacturing and selling typewriting machines was continued and largely increased and an important good-will was created and existed which was a source of great profits to complainant.

4. That the defendant, Howe Scale Company of 1886, a corporation existing under the laws of the State of Vermont, has made use, in connection with the sale of typewriting machines manufactured by the Remington-Sholes Company, a corporation existing under the laws of the State of Illinois, of the name and designation "Remington-Sholes" and "Rem-Sho," and has sold and caused the typewriting machines of said "Remington-Sholes Company" to be advertised for sale and to be offered for sale and sold and delivered, by word of mouth and otherwise, under the name of "Remington-Sholes" typewriters and "Rem-Sho" typewriters.

5. That the sale by the defendant, "Howe Scale Company of 1886," of typewriting machines manufactured by or for the said "Remington-Sholes Company" under the name of or as "Remington-Sholes" typewriters, or "Rem-Sho" typewriters, constitutes a fraudulent infringement and invasion of the rights of the complainant and an unfair and inequitable competition which equity will restrain.

6. That at the time this action was commenced the defendant "Howe Scale Company of 1886" was the general agent of the "Remington-Sholes Company" for the United States and that said last named company assumed the defense of this action, agreed to pay and has paid all expenses incident to the defense thereof, and agreed to protect and save harmless said defendant with respect thereto.

7. And it not appearing that the defendant as such agent has received any profits, gains and advantages which have arisen or accrued to it from the infringement of the said trade-name and designation "Remington" by using or selling typewriting machines having thereon the name "Remington" or the abbreviation "Rem" as the name or part of the name of said writing machines, and an account thereof is denied without prejudice to any right of the complainant to recover the same of the principal the Remington-Sholes Company.

8. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein perpetually enjoining the defendant, "Howe Scale Company of 1886," its officers, clerks, attorneys, agents, servants and workmen and all persons acting in privity with it or them, or claiming through or under it or them from in any manner whatsoever making use of the designation "Remington" or "Rem," as the name or part of the name of any typewriting machine whatsoever manufactured by said Remington-Sholes Company, or by defendant or any person or concern, and from selling, offering, exposing or advertising for sale by means of signs, show cards, catalogues, circulars, publications, advertisements or by word of mouth, or in any manner whatsoever, typewriting machines manufactured by said "Remington-Sholes Company" or by defendant or any person or concern under the name of or as "Remington-Sholes" or "Rem-Sho" or by any designation of which the

word "Remington" or the abbreviation "Rem" shall constitute a part.

9. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein perpetually enjoining the said defendant, Howe Scale Company of 1886, its officers, clerks, attorneys, agents, servants and workmen, and all persons acting in privity with it or them or claiming through or under it or them from in any manner whatsoever making use of the word "Remington" or the abbreviation "Rem" as the whole or as a part of any name or designation whatsoever, which shall be marked upon, or affixed or applied, by any means to typewriting machines manufactured or sold by the said "Remington-Sholes Company" or by defendant or any person or concern and used by it or them in connection with the manufacture and sale of its or their writing machines and to distinguish and identify the same.

10. And it is further ordered, adjudged and decreed that the said complainant do recover of the defendant its costs, charges, and disbursements in this suit to be taxed by the Clerk of this Court and that in default of the payment of the same the complainant have execution therefor.

HOYT H. WHEELER,
Judge.

CIRCUIT COURT OF THE UNITED STATES, District of Vermont, } ss.:

UNITED STATES OF AMERICA.

THE PRESIDENT OF THE UNITED STATES, To the Howe Scale Company of 1886, a corporation, etc., and to your Counsellors, Attorneys, Solicitors, Officers, Directors, Trustees, Agents, Clerks, Employees, Servants and Workmen, and to each and every of you GREETING:

Whereas, It hath been represented to the Judges of our Circuit Court of the United States for the District of Vermont, in Chancery sitting, on the part of Wyckoff, Seamans & Benedict, a corporation, complainant in its certain bill of complaint, exhibited in our said Circuit Court, on the Chancery side hereof, before the Judges of said Court, against you, said The Howe Scale Company of 1886, to be relieved touching the matters complained of, in which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill and that your actings and doings in the premises are contrary to equity and good conscience. And it being ordered that a writ of perpetual injunction issue out of said Court, upon said bill, enjoining and restraining you, and each of you, as prayed for in said bill; we, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you said The Howe Scale Company of 1886, your counsellors, attorneys, solicitors, officers, directors, trustees, agents, clerks, employees, servants and workmen, and each and every of you, that you *do absolutely desist and refrain from* in any manner whatsoever making use of the designation "Remington" or "Rem" as the name or part of the name of any typewriting machine whatsoever manufactured by said Remington-Sholes Company, or by defendant, The Howe Scale Company of 1886, or any person or

concern, and from selling, offering, exposing or advertising for sale by means of signs, show cards, catalogues, circulars, publications, advertisements, or by word of mouth, or in any manner whatsoever, typewriting machines manufactured by said Remington-Sholes Company or by said defendant or any person or concern, under the name of or as "Remington-Sholes" or "Rem-Sho," or by any designation of which the word "Remington" or the abbreviation "Rem" shall constitute a part.

And you and each of you are further enjoined and restrained from in any manner whatsoever making use of the word "Remington" or the abbreviation "Rem" as the whole or as a part of any name or designation whatsoever, which shall be marked upon or affixed or applied, by any means to typewriting machines manufactured or sold by the said Remington-Sholes Company or by defendant, The Howe-Scale Company, of any person and concern, and used by it or them in connection with the manufacture and sale of its or their writing machines, and to distinguish and identify the same, until this Honorable Court, in Chancery sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

To the Marshal of the District of Vermont, to execute and return in due form of law.

Witness, the Hon. MELVILLE W. FULLER, Chief Justice of the United States of America, at Burlington, in said district, this 8th day of November, in the year of our Lord one thousand nine hundred and one, and of our Independence the one hundred and twenty-sixth year.

[L. S.] GEO. E. JOHNSON,
Clerk.

UNITED STATES OF AMERICA,
District of Vermont.

At City of Rutland, in said district, on the 9th day of November, A. D. 1901, I served the within "In-

junction" on the within named "The Howe Scale Compay of 1886" by delivering to John A. Mead, President of the said "The Howe Scale Company of 1886"; also on the same day I served this "injunction" on the within named firm "Butler & Moloney," by delivering to F. M. Butler, a member of the firm of "Butler & Moloney," to each of the above named, John A. Mead and F. M. Butler, a true and attested copy thereof, with this my return endorsed thereon.

Attest:

FRED. A. FIELD,
U. S. Marshal.

By

F. H. CHAPMAN,
Deputy U. S. Marshal.

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UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT, Complainant, Appellee, vs. HOWE SCALE COMPANY OF 1886, Defendant, Appellant. | In Equity. |

The above named defendant, Howe Scale Company of 1886, conceiving itself aggrieved by the final decree entered in this cause, on or about November 2, 1901, doth hereby appeal from said decree

to the United States Circuit Court of Appeals for the Second Circuit, and it prays that this its appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Second Circuit.

PEIRCE & FISHER,
Solicitors for Defendant and Appellant, Howe Scale Co. of 1886.

And now, to wit, on the 14th day of January, A. D. 1902, it is ordered that the appeal be allowed as prayed for.

HOYT H. WHEELER,
Judge.

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UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT, Complainant, Appellee, vs. HOWE SCALE COMPANY OF 1886, Defendant, Appellant. | In Equity. |

On reading defendant's petition and reasons for appeal, duly entered in its behalf by Messrs. Peirce & Fisher, its attorneys, the Court doth order allowance of such appeal, upon filing of costs bond in usual form for sum of five hundred dollars ($500), which bond is now submitted, approved by the Court and ordered to be placed on file in custody of the Clerk.

HOYT H. WHEELER,
Judge.

UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT, Complainant-Appellee, vs. HOWE SCALE COMPANY OF 1886, Defendant-Appellant. | In Equity. |

## Appeal and Assignment of Errors.

And now comes the defendant, by its solicitors, Messrs. James H. Peirce, and George P. Fisher, Jr., and Messrs. Butler & Moloney, and by leave of the Court in that behalf first obtained, takes this its appeal in the cause of action aforesaid to the United States Circuit Court of Appeals for the Second Circuit from the decree entered in this cause on or about November 2, 1901.

In support of said appeal and as reasons therefor said defendant assigns the following, viz.:

1. That it was error to hold that since about the year 1873, complainant and its predecessors have been engaged in the manufacture and sale of typewriting machines which became well and favorably known and were marked and designated as "Remington machines."

2. That it was error to hold that typewriting machines were put upon the market by complainant and its predecessors and introduced and advertised for sale and popularized in this country and in foreign countries under the name of "Remington" and

"Remington Typewriter" and that by said names said typewriting machines came to be widely known and identified by purchasers and the public; and that said names have for many years been continuously and exclusively used to designate and identify complainant's machines.

3. That it was error to hold that the sale by defendant of typewriting machines manufactured by or for the "Remington-Sholes Company" under the name of or as "Remington-Sholes" typewriters or "Rem-Sho" typewriters, constitute a fraudulent infringement and invasion of the rights of complainant and an unfair and inequitable competition, which equity will restrain.

4. That it was error to hold that an injunction be issued perpetually enjoining the defendant, Howe Scale Company of 1886, its officers, clerks, attorneys, agents, servants and workmen and all persons acting in privity with it or them, or claiming through or under it or them, from in any manner whatsoever making use of the designation "Remington" or "Rem" as the name or part of the name of any typewriting machine whatsoever manufactured by said Remington-Sholes Company, or by defendant or any person or concern, and from selling, offering, exposing, or advertising for sale by means of signs, show cards, catalogues circulars, publications, advertisements, or by word of mouth or in any manner whatsoever typewriting machines manufactured by said Remington-Sholes Company or by defendant or any person or concern under the name of or as "Remington-Sholes" or "Rem-Sho" or by any designation of which the word "Remington" or the abbreviation "Rem" shall constitute a part.

5. That it was error to hold that an injunction be issued perpetually enjoining the defendant, Howe Scale Company of 1886, its officers, clerks, attorneys,

agents, servants and workmen, and all persons acting in privity with it or them, or claiming through or under it or them from in any manner whatsoever making use of the word "Remington," or the abbreviation "Rem" as the whole or as a part of any name or designation whatsoever, which shall be marked upon or affixed or applied by any means to typewriting machines manufactured or sold by the said Remington-Sholes Company or by defendant or any persons or concern, or used by it or them in connection with the manufacture and sale of its or their typewriting machines and to distinguish and inentify the same.

6. That it was error to hold that the complainant recover of the defendant its costs, charges and disbursements in this suit to be taxed by the Clerk of the Court.

7. That the Court erred in not dismissing the bill of complaint at complainant's cost.

8. That the Court below erred in denying defendant's motion to suppress testimony and exhibits introduced on behalf of complainant, said motion appearing in Vol. 1 of Defendant's Record, pp. 439–441; the subtance of the said testimony and exhibits being as follows:

(*a.*) Testimony of various witnesses as specifically set forth in paragraph 1 of defendant's said motion, and reciting various irrelevant and immaterial matters and matters of hearsay.

(*b.*) Testimony taken in rebuttal as specifically set forth in paragraph 2 of defendant's motion, said testimony relating to various matters not developed by the testimony on behalf of defendant and not in proper rebuttal of such testimony.

(*c.*) Testimony introduced for the purpose of showing acts, advertisements, publications, &c., occuring in foreign countries and alleged to be in vio-

lation of complainant's supposed rights, but failing to show any connection whatever of defendant with said acts, advertisements, publications, &c.; said testimony being specifically referred to in paragraph 3 of defendant's said motion, and comprising more particularly the testimony of R. M. Jones (C. R., Vol. I., pp. 230-231; also C. R., Vol. I., pp. 374-384; also C. R., Vol. I., pp. 507-510; also C. R., Vol. II., pp. 106-110), that notices, advertisements, &c., concerning Franklin Remington, the Remington-Sholes Company and the "Remington-Sholes," or "Rem-Sho" typewriter, appeared in certain newspapers and other publications printed and published in various foreign countries, and the depositions of E. Beitelle (C. R., Vol. I., pp. 385-386), of M. R. Pollock (C. R., Vol. I., pp. 458-439), of John Volk (C. R., Vol. I., pp. 464-466), and of Leo Nabokoff (C. R., Vol. I., pp. 502-507), as to the various foreign newspapers and publications, and as to the accuracy of translations of matter appearing therein; and also the entire deposition of J. F. McClain (C. R., Vol. II., pp. 84-91), and of C. F. Wallau (C. R., Vol. II., pp. 92-97), said depositions setting forth matters alleged to have transpired in foreign countries, but with which defendant was not shown to have had any connection.

(*d.*) Also the exhibits introduced during the taking of the depositions objected to and the exhibits introduced by stipulation subject to objection, said exhibits being foreign newspapers and other publications containing printed matter, advertisements, &c., in regard to the Remington-Sholes Company and the "Remington-Sholes," or "Rem-Sho" typewriter, but with which publications, advertisements, &c., defendant was not proven to have had any connection, said exhibits being specifically referred to in paragraphs four and five of defendant's motion; that to all of the testimony referred to in defendant's said motion and to all and singular of the exhibits therein referred to, timely and proper

objections were made of record on behalf of defendant, the objection to said exhibits and to the testimony relating thereto being that they were immaterial, irrelevant and incompetent, and that it did not and could not be proven that any statements or advertisements appearing in the publications in question were made by authority, or with the sanction of the defendant or the Remington-Sholes Company, or of any one having authority to act for them, or either of them, in such matters.

HOWE SCALE COMPANY OF 1886,
By PEIRCE & FISHER,
Its Solicitors.

GEORGE P. FISHER, Jr.,
Of Counsel.

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UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT,<br>Complainant, Appellee,<br><br>vs.<br><br>HOWE SCALE COMPANY OF 1886,<br>Defendant, Appellant. | In Equity. |

## Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS that the undersigned, viz.: HOWE SCALE COMPANY OF 1886, as principal, and CHARLES NORMAN FAY of Chicago, as surety, are indebted to Wyckoff, Seamans & Benedict in the penal sum of Five Hundred Dollars

($500.00) good and lawful money of the United States, for the payment of which sum, well and truly to be made, we do bind ourselves and the successors and assigns of each of us respectively, jointly and severally, firmly by these presents.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals at the dates hereinafter stated.

WHEREAS, the above named Howe Scale Company of 1886 has prayed an appeal to the United States Circuit Court of Appeals for the Second Circuit to reverse the decree rendered in the above entitled suit by the Judge of the Circuit Court of the United States for the District of Vermont.

NOW THEREFORE, the condition of this obligation is such that if the above named Howe Scale Company of 1886 shall well and truly prosecute its said appeal to effect and shall well and truly pay all costs that may be awarded should said Howe Scale Company of 1886 fail to make good its appeal, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

THE HOWE SCALE CO. OF 1886.
By J. A. MEAD,
Prest.

CHARLES NORMAN FAY,
[SEAL.]

Approved this 14th day of January A. D. 1902.

HOYT H. WHEELER,
Judge.

STATE OF VERMONT, }
County of } ss.:

Be it remembered that on this 30th day of December, 1901, personally appeared before me the undersigned, a notary public, in and for the County and State aforesaid, John A. Mead, president of the Howe Scale Company of 1886, the principal named

in the foregoing bond and acknowledged that he executed said bond on behalf of said Company, and that said bond was the free act and deed of said Company.

EDWARD V. ROSS,
Notary Public.

[L. S.]

STATE OF ILLINOIS, }
County of Cook, } ss.:

Be it remembered that on this twenty-eighth day of December, 1901, before me a notary public, in and for the county and State aforesaid, appeared Charles Norman Fay of Chicago, Illinois, well known to me to be the same person of that name in annexed bond mentioned, who solemnly acknowledged the execution of said bond to be his voluntary act and deed for the purpose therein stated and expressed. And the said Charles Norman Fay, being duly sworn according to law, deposes and says: That he is the owner of tangible property of value in excess of the amount specified in said bond, and in excess of the sum of one thousand dollars above all just debts and liabilities.

CHARLES NORMAN FAY.

Acknowledged, subscribed and sworn to before me at Chicago, Illinois, the day and year above written.

ALBERTA ADAMICK,
Notary Public,
Cook County, Ill.

[L. S.]

Form approved.
H. D. DONNELLY,
Complainant's Counsel.

## Citation.

UNITED STATES OF AMERICA, ss.:

To WYCKOFF, SEAMANS & BENEDICT, GREETING:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the 2d Circuit, to be holden in the City of New York on the 24th day of February, A. D. 1902, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the District of Vermont, wherein the Howe Scale Company of 188[illegible] is appellant, and Wyckoff, Seamans & Benedict is respondent, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

HOYT H. WHEELER,
Judge.

January 28th, A. D. 1902.

Service of the foregoing citation is hereby accepted this 30th day of January, A. D. 1902.

WILDER L. BURNAP,
Solicitor for Appellee-Complainant.

H. D. DONNELLY,
Of Counsel.

## Stipulation.

UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

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| WYCKOFF, SEAMANS & BENEDICT<br>vs.<br>HOWE SCALE COMPANY OF 1886. | In Equity. |

It is is hereby stipulated between counsel for the respective parties that all paper exhibits not included in the printed record, as filed in this Court, shall be treated as mechanical exhibits, and need not be printed or reproduced.

WILDER L. BURNAP,
Solicitor for Complainant.
H. D. DONNELLY,
Of Counsel.
PEIRCE & FISHER,
Solicitors for Defendant.

UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

v.

HOWE SCALE COMPANY OF 1886.

Upon all the proceedings had, and the allowance of appeal herein by Hon. HOYT H. WHEELER, Judge, on the 14th day of January, 1902, the citation returnable February 24, 1902, and the assignment of errors herein, all of which, with admission of service to the adverse party, were filed with the Clerk of the United States Circuit Court for the District of Vermont, it is hereby on request of the Clerk, and representation that more time is necessary,

Ordered, that the time to file the record herein with the Clerk of the United States Circuit Court of Appeals for the Second Circuit be and it is hereby extended thirty days from February 24, 1902.

Done at Chambers in Brattleboro, in said District, February 20, A. D. 1902.

HOYT H. WHEELER,
Judge.

UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

WYCKOFF, SEAMANS & BENEDICT

*v.*

HOWE SCALE COMPANY OF 1886.

Upon all the proceedings had, and the allowance of appeal herein by Hon. HOYT H. WHEELER, Judge, on the 14th day of January, 1902, the citation returnable February 24, 1902, and the assignments of error herein, all of which, with admission of service on the adverse party, were filed with the Clerk of the United States Circuit Court for the District of Vermont, it is hereby on request of the Clerk and representation that more time is necessary,

Ordered, that the time to file the record herein with the Clerk of the United States Circuit Court of Appeals for the Second Circuit be and it is hereby extended thirty days from March 24, 1902.

Done at Chambers in Brattleboro, in said District, March 22d A. D. 1902.

HOYT H. WHEELER,
Judge.

UNITED STATES OF AMERICA,
District of Vermont.

I, GEORGE E. JOHNSON, Clerk of the Circuit Court of the United States of America for the District of Vermont, in the Second Circuit, do hereby certify that the foregoing pages contain a true and complete transcript of the record and proceedings had in said Court in the case of WYCKOFF, SEAMANS &

BENEDICT, appellee, against THE HOWE SCALE COMPANY of 1886, appellant, as the same remain of record and on file in my office in said cause.

In testimony whereof, I have caused the seal of said Court to be hereunto affixed, at the City of Burlington, in said District of Vermont, in the Second Circuit, this 22d day of April, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

GEORGE E. JOHNSON,
Clerk.

[SEAL.]

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Before WALLACE, LACOMBE AND COXE, Circuit Judges.

Wyckoff, Seamans & Benedict,
*Complainant-Appellee,*
*vs.*
The Howe Scale Company of 1886,
*Defendant-Appellant.*

This cause comes here upon appeal from a decree of the Circuit Court, District of Vermont granting an injunction against the use of the name Remington or its abbreviation "Rem" upon defendant's typewriting machines, or in the sale thereof. The nominal defendant is a sales agent only, the real defendant, which has assumed the defence of the suit, is the Remington-Sholes Company of Chicago, Illinois, and it will be understood that whenever the word "defendant" is used in this opinion it refers to the last-named corporation only.

LACOMBE, Circuit Judge.

The complainant is the successor of so much of the business of the corporation E. Remington & Sons, (which succeeded the old firm of the same name) of Ilion, N. Y., as is concerned with the manufacture and sale of typewriters, including good-will, trade marks, etc. The old firm was organized into a corporation in 1865 and in 1873 it began the manufacture of typewriting machines. It is not disputed here that the firm and the corporation acquired a high and well deserved reputation for careful workmanship in every branch of manufacture which it undertook; nor is it disputed that the typewriting machines which the corporation and its successor have continuously manufactured at Ilion are most favor-

ably known to the public and are associated in the public mind with the name Remington, so that the ordinary purchaser is quite likely to assume that a machine offered to him for sale as a "Remington" has come from the establishment founded by the Remingtons at Ilion nearly half-a-century ago. To this manufacture and trade the complainant succeeded in 1886; it thereupon became entitled to conduct the business of manufacturing machines and selling them as Remington machines, and would have the right to invoke the aid of a court of equity to restrain another trader from any action which would be calculated unnecessarily to confuse the goods of his own make with those of complainant.

The defendant is the Remington-Sholes Company, it marks its machines "Remington-Sholes" and "Rem-Sho" and there can be no doubt upon the record that the use of the name "Remington" helps the sale of machines and induces many purchasers to suppose that such machines are the product of the old establishment at Ilion. Defendant, however, insists that it has the right to use that name, because of its relations with two gentlemen of the name of Remington, that it has done nothing else to produce confusion and that, therefore, whatever confusion results is *damnum absque injuria*. We do not find in this voluminous record sufficient evidence that defendant has itself done anything to promote confusion in the minds of the public, except to use the name Remington on its machines and in its literature. It may very well be that it understood quite clearly that by thus using the name defendant gave to all middlemen and dealers, outside of its own agents, opportunity and perhaps a suggestion to misrepresent the parentage of the machines, but, if it had the right to use the same, it cannot be held responsible for the consequences of such use. On the other hand if it

had no right so to use the name it cannot avoid responsibility merely because its agents were careful to explain when selling to the trade that the Remington-Sholes machines were not the product of the original Remington establishment or of its successor. In such a case the question is "whether the defendants have or have not knowingly put into the hands of the retail dealers the means of deceiving the ultimate purchasers." *N. K. Fairbank Co.* v. *Bell*, 77 F. R. 869.

The question here is whether the name "Remington-Sholes" which is defendant's designation, and which therefore impregnates all the literature it circulates with the name which complainant's predecessors made a household word, was fairly bestowed upon it; and whether the same name was fairly placed on the machines.

The history of defendant's machines is as follows. In 1892 Zalmon G. Sholes (whose father had been an inventor of typewriters) invented a machine, constructed a working model of it and subsequently a second model, the first having been destroyed by fire. He called this "The Z. G. Sholes" typewriter and endeavored unsuccessfully to get sufficient capital to manufacture it for sale. In 1893 he became acquainted with Franklin Remington and Carver Remington who were sons of Samuel Remington at one time president of the original corporation at Ilion. These junior Remingtons had not been themselves engaged in the manufacture of typewriting machines and at the time they met Sholes were engaged in some contracting work in Chicago, in connection with the drainage canal. In August 1893 they entered into an agreement with Sholes becoming jointly interested with him in the enterprise, and endeavored to interest capitalists, their own means being insufficient. In No-

vember 1893 the name of the machine was changed from "The Z. G. Sholes" to "Remington-Sholes," that is to say the name on the model was changed and the parties interested began to talk of the machine as the "Remington-Sholes," but no such machines had apparently been manufactured and offered for sale. In the spring of 1894, Mr. Head and Mr. Fay, two large capitalists became interested, and in May of that year a corporation was organized to manufacture and sell the machines. Of this corporation Franklin and Carver Remington were stockholders. Fay was the chief promoter, and received one-third of the capital stock as compensation for his services in organizing it. The name selected by its promoters for the corporation was "Remington-Sholes Typewriter Company." The new company leased a factory, bought tools and by December 1894 its first typewriting machine was placed upon the market. It was labelled "Remington-Sholes." This company continued to make and sell machines under that designation until it became financially embarrassed. Thereupon its stockholders, Remington, Fay, Head and others organized a new company, the present defendant "Remington-Sholes Co." to whom the entire assets of the old company was transferred through Fay, who held them and conducted the business for a brief interval. The new company devised the name "Rem-Sho" as a trade-mark of its machine, and marks upon the cross-bar of each machine the words "Remington-Sholes Company, Mfrs. Chicago." Manifestly the situation of the new company relatively to any issues raised here is substantially the same as that of the old company.

The principles of law governing cases of this kind are simple and easily stated; the only difficulty is their application. The Supreme Court in *Singer Mfg. Co.* v.

*June Mfg. Co.*, 163 U. S. 169 held that "Every one has the absolute right to use his own name honestly in his own business, even though he may incidentally interfere with and injure the business of another having the same name. In such case the inconvenience or loss to which those having a common right are subjected is *damnum absque injuria*. But, although he may thus use his name, he cannot resort to any artifice or to any act calculated to mislead the public as to the identity of the business firm or establishment, or of the article produced by them, and thus produce injury to the other beyond that which results from the similarity of name. Where the name is one which has previously thereto come to indicate the source of manufacture of particular devices, the use of such name by another, unaccompanied with any precaution or indication, in itself amounts to an artifice calculated to produce the deception." No one may be excluded from taking up whatever business he chooses by the circumstance that some one else of the same name has made a reputation in it; nor may he be required to conduct such business under an alias although the conducting of it under his own name may produce a confusion in the public mind as to the identity of goods, which no "precaution or indication" of his can effectually prevent. It is through no fault of his that his name happens to be the same as that of some other man who has already impressed his personality on some particular industry. All that is required of him is that he shall use reasonable precautions to prevent confusion, that he shall refrain from any affirmative act which may produce it; thus doing and thus refraining he may do business under the name that came to him without his choice and may call his goods by it, if he pleases. This may cause much injury to some one else, and some injury to the public,

but no other rule could be adopted without injustice to the innocent individual, who is not responsible for the selection of his name. Unless the individual is to be debarred from one particular business altogether, or compelled to give up the name he inherited, the use of that name by two persons selling the same articles is a necessary evil to which the public must submit.

In the case of a corporation, however, the situation is different. The choice of its name is voluntary; such name is an artificial thing which can be selected by its incorporators from the entire vocabulary of names. In *R. W. Rogers Co.* v. *Wm. Rogers Man. Co.* 70 F. R. 1019 this court enunciated the proposition that "a body of associates who organize a corporation for manufacturing and selling a particular product are not lawfully entitled to employ as their corporate name in that business the name of one of their number when it appears that such name has been intentionally selected in order to compete with an established concern of the same name, engaged in similar business, and divert the latter's trade to themselves by confusing the identity of the products of both, and leading purchasers to buy those of one for those of the other. . . . The corporators chose the name unnecessarily, and, having done so for the purpose of unfair competition, cannot be permitted to use it to the injury of the complainant." Other courts have laid down substantially the same doctrine *Higgins Co.* v. *Higgins Soap Co.* 144 N. Y. 462, *DeLong* v. *DeLong Co.* 89 Hun. 399, *Garrett* v. *T. H. Garrett & Co.* 78 F. R. 472, *LePage Co.* v. *Russia Cement Co.* 51 F. R. 941, *Clark Thread Co.* v. *Armitage* 67 F. R. 896, *Valentine Meat Juice Co.* v. *Valentine Extract Co.* 17 Patent & Trade Mark Cases 673. Moreover the incorporator who elects to transfer his own name for business purposes to

an artificial person other than himself is taking an affirmative step in the direction of promoting unnecessary confusion, instead of taking precautions to prevent it.

The corporation defendant and its predecessor the typewriter company acquired their names by the selection of the individuals who organized them. Obviously there was no necessity that either of them should take the name "Remington" either alone or in combination. The junior Remingtons contributed money to the enterprise and gave, at least one of them did, time and services to its promotion, but they were very far from being the entire corporation; the corporation was a separate entity from them; they chose not to prosecute the typewriter business themselves; had they done so good faith toward those dealing with them might make it necessary to use their own name; they chose on the contrary to associate themselves with others in a corporation whose name its organizers were free to select. Some suggestion has been made that the machines existed before the incorporation; that they were produced by the Remingtons and Sholes individually at a time when the Remingtons had gone into the typewriting business with Sholes on their own account and had a right to sell their goods under their own name. The record is very volunminous and we may have overlooked some item of proof, but a careful examination of it does not sustain this proposition. Prior to the formation of the Remington-Sholes Typewriter Company no machines had been sold or offered for sale. Two or more had been made as models and the name on them changed from "Z. G. Sholes" to "Remington-Sholes," but the new name had not become associated with the machine except in the talk of the future corporators among themselves; the public knew nothing of any such name in connection with a typewriter, indeed did not

know the junior Remingtons or even Sholes as a producer of typewriters. No necessity, business or otherwise, required the selection of the name "Remington-Sholes" for the corporation. And when it was formed and began for the first time to make and sell machines, it was free to select any name it pleased to designate them. It chose its own name, but its choice was not like the choice of an individual who has inherited a name and applies it to his goods. If the name of the corporation was adopted unnecessarily and with the expectation that it would produce a confusion through which some trade intended for another might be diverted to itself, it would have no right to offer its goods under that name.

We have no doubt whatever that the name Remington was chosen because it was expected that it would naturally lead the public to suppose that the new corporation was either the successor or some branch of the old concern, of which appellant's brief observes: "the name Remington was admittedly a by-word for good workmanship the world over." There are some propositions that do not require direct affirmative testimony, and we do not gain much enlightenment from the long examination of Mr. Sholes as to what were his mental processes when he invented the combination "Remington-Sholes." Counsel for the appellee frankly conceded on the argument that the choice was an "intelligent" one. That is quite sufficient. We have no doubt it was an intelligent choice; those who selected it well-knew that the use of the name Remington in connection with a typewriting machine would help to sell it, as the name of Brown or Peterson would not. They knew too that it would be thus helpful because it suggested to the purchaser that it had been made by the Remington concern, whose name was a "by-word for good workmanship the world over."

They knew that the presence of that name on the machine would be a constant temptation, often yielded to by whomever sold one to the uninstructed purchaser, to represent that it was the "real" or the "improved" Remington; that the presence of the name made confusion easy; and that the results of any confusion would be entirely in their favor. It was because of that knowledge that the Remington's associates, Sholes the sole inventor of the machine, and Fay the capitalist whose contributions enabled the new concern to manufacture on a scale large enough to bring it into the field as a competitor, selected the Remingtons' name, not because they were willing to pay some graceful compliment to Franklin Remington for the energy and enthusiasm with which he entered upon his new sphere of activity, or to himself and his brother for the $15,000. they invested in the enterprise.

Under the authorities in this circuit the complainant is entitled to the injunction granted him as to the use of the name "Remington." The arbitrary name "Rem-Sho," however, does not seem to us to be sufficiently like "Remington" to be by itself a reasonable cause of confusion. The decree, therefore, is reversed without costs and cause remanded with instructions to decree in favor of complainant only as to the name "Remington."

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Wyckoff, Seamans & Benedict,
*Complainant-Appellee,*
*vs.*
The Howe Scale Company,
*Defendant-Appellant.*

COXE, J.

I concur in the conclusion reached by Judge Lacombe for the reason that I am unable to distinguish this cause from *Rogers* v. *Rogers,* 70 Fed. Rep. 1017.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Wyckoff, Seamans & Benedict,
*Appellee,*
*vs.*
The Howe Scale Company,
*Appellant.*

WALLACE, LACOMBE AND COXE, Circuit Judges.

WALLACE, Circuit Judge, dissenting:—

The only right to use the word "Remington" which the complainant ever acquired from a person of that name was to employ it as a part of the name "Standard Remington Typewriter" in connection with the manufacture and sale of typewriters of the two forms which previous to March, 1886, had been manufactured by E. Remington & Sons. In April, 1888, the complainant registered a trademark in the patent office consisting of a symbol resembling a seal, red in color, and having in white letters the words "Standard Remington Type-

writer". It has also been accustomed to mark its machines with the words "Remington Standard Typewriter".

The defendant (I refer to the party who has assumed the defense of the suit.) has been deprived of using its name, "Remington-Sholes Company", upon its own typewriters, machines which vary in appearance so much from those sold by the complainant that a mistake in identity is impossible except by persons who suppose that "Remington Standard Typewriter", or "Standard Remington Typewriter", and "Remington-Sholes Company", are the same. Doubtless some careless purchasers have been misled, and some unscrupulous dealers have traded on the resemblance imparted by the word Remington; but the defendant is not legally or morally responsible for the deception practiced by others. From the inception of its use of the word it has scrupulously sought to avoid any confusion of identity, and wishing to sell its machines upon their own merits has industriously pointed out that it had no connection with the Standard Remington Typewriter in its advertisements, circulars, and letters of instruction to sales agents.

If the defendant had selected its name for the purpose of unfair competition in trade with the complainant, the question whether the collocation of the word Remington with the other words did not suffice to distinguish its name from the complainant's name would be of little importance, but there is no evidence that it did this except the implication created by its selection of the word "Remington;" and if it selected the word from a legitimate motive any such implication is repelled. The facts attending the selection of its name by the defendant in my opinion show quite conclusively that it did so legitimately.

The defendant is the successor in business of a corporation of practically the same name (The Remington-Sholes Typewriter Company), which was the successor in business of a concern of which the two Remingtons and Sholes were the owners. I agree with the opinion of the court below in the statement that the situation of the new company relatively to any issues raised here is substantially the same as that of the old company, and the inquiry therefore is whether The Remington-Sholes Typewriter Company, in adopting its corporate name, did so legitimately. In 1893 the two Remingtons, sons of the former president of E. Remington & Sons, became interested with Sholes in exploiting a typewriter which the latter had invented, patented, built, and marked with his name as the "Z. G. Sholes Typewriter," the two Remingtons buying a three-fourths interest for about $9,000. Shortly afterwards the name of the machine was changed and it was marked the "Remington-Sholes Typewriter." Between that time and the spring of 1894 the Remingtons had expended besides their original purchase money some six or seven thousand dollars for salaries, shop rent, and other expenses in exploiting the machine, Franklin Remington devoting himself exclusively to the enterprise. In the spring of 1894, in order to interest others and procure thereby the capital required for manufacturing the machine upon a commercial scale and establishing business agencies, the Remingtons and Sholes concluded to organize a corporation. Accordingly they organized the Remington-Sholes Typewriter Company, the Remingtons and Sholes owning two-thirds of the stock of that corporation and one-third being given to the new associates. The new company at once purchased the necessary tools and machinery, and commenced manufacturing the machines and placing them on the market,

and until the summer or fall of 1895 its business was managed entirely by Franklin Remington and Sholes. Undoubtedly in selecting the corporate name they understood that it might suggest some association with the great concern at Ilion, and to that extent that the word Remington was valuable; but that concern was not engaged in the manufacture of typewriters. It was natural that those who had invented the machine, and given all their time and means in introducing it to the public, when they came to organize the corporation which was to represent the culmination of their hopes and efforts, should choose their own name as the corporate name. In doing so I think they were exercising only the common privilege that every man has to use his own name in his own business, provided it is not chosen as a cover for unfair competition. They did not choose the complainant's name literally, or so closely that those using ordinary discrimination would confuse the identity of the two names, and the differentiation is sufficient to relieve them of any imputation of fraud.

I think the decision should be reversed with instructions to dismiss the bill.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 20th day of April one thousand nine hundred and three.

Present: Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. ALFRED C. COXE,
Circuit Judges.

Wyckoff, Seamans & Benedict,
*Complainant-Appellee,*
*vs.*
Howe Scale Company of 1886,
*Defendant-Appellant.*

Appeal from the Circuit Court of the United States for the District of Vermont.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the District of Vermont, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said Circuit Court be and it hereby is reversed without costs, and cause remanded with instructions to decree in favor of complainant only as to the name "Remington."

It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

*United States of America, Southern District of New York, ss.*

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 1534 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of *Wyckoff, Seamans & Benedict* against *Howe Scale Co. of 1886*, as the same remains of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the Southern District of New York, in the Second Circuit, this 24th day of June, in the year of our Lord one thousand nine hundred and three, and of the independence of the Said United States the one hundred and twenty-seventh.

[SEAL.]

WILLIAM PARKIN,
Clerk.

To the Supreme Court of the United States, Greeting:

Whereas, the record and all proceedings whereof mention is within made, having been lately certified and filed in the office of the Clerk of the honorable, the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under direction of counsel for the petitioners, said stipulation is certified as a return to the writ of certiorari issued herein.

Dated, New York, December 19, 1903.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals
for the Second Circuit.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. Wyckoff, Seamans & Benedict vs. Howe Scale Company of 1886. Return to certiorari.

[Endorsed:] File No. 19,096. Supreme Court U. S., October term, 1903. Term No. 445. Howe Scale Co. of 1886, & Fay Sholes Co., Petitioners, vs. Wyckoff, Seamans & Benedict. Writ of certiorari & return. Filed December 23d, 1903.

SUPREME COURT OF THE UNITED STATES.

No. 445, OCTOBER TERM, 1903.

HOWE SCALE COMPANY OF 1886 ET AL.,
Petitioners,

vs.

WYCKOFF, SEAMANS & BENEDICT.

On consideration of the petition for a cross-writ of certiorari herein, and of the argument of counsel thereupon had, as well in support of as against the same, it is now here ordered by the court that said petition be, and the same is hereby, granted, the transcript of record heretofore filed to be taken as a return to the writ.

January 11, 1904.

(Endorsed:) File No. 19,096. Supreme Court of the United States. October term, 1903. Term No. 445. Order. Filed Jan. 11, 1904.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Howe Scale Company of 1886 is appellant and Wyckoff, Seamans & Benedict is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the district of Vermont, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the second day of December, in the year of our Lord one thousand nine hundred and three.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 19,096. Supreme Court of the United States. No. 445, October term, 1903. Howe Scale Co., of 1886, & Fay-Sholes Co. vs. Wyckoff, Seamans & Benedict. Writ of certiorari.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Dec. 19, 1903. William Parkin, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

WYCKOFF, SEAMANS & BENEDICT,
Complainant-Appellee,

vs.

HOWE SCALE COMPANY OF 1886,
Defendant-Appellant.

It is hereby stipulated by and between the parties hereto, by their respective counsel, that the certified copy of the transcript of record in this cause filed by the Clerk of this Court in the Supreme Court of the United States in an application there made for a writ of certiorari in this cause there entitled Howe Scale Company of 1886 and Fay-Sholes Company, Petitioners, vs. Wyckoff, Seamans & Benedict, Respondent, No. 445, October Term, 1903, shall be taken as a return to the writ of certiorari granted by the said Supreme Court in said cause on the 2nd day of December A. D., 1903.

HENRY D. DONNELLY,
Counsel for Complainant-Appellee.
GEO. P. FISHER, Jr.,
Counsel for Defendant-Appellant.

ENDORSED:—U. S. Circuit Court of Appeals, Second Circuit. Wyckoff, Seamans & Benedict vs. Howe Scale Company of 1886. Stipulation. Pierce & Fisher, Attorneys at Law, 140 Dearborn Street, Chicago, Solicitors for Defdt. Applnt. United States Circuit Court of Appeals, Second Circuit. Filed Dec. 19, 1903. William Parkin, Clerk.

Office Supreme Court U. S.
FILED
OCT 22 1903
JAMES H. McKENNEY,
Clerk.

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,
Petitioners.

vs.

TYCKOFF, SEAMANS & BENEDICT,
Respondent.

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445

## PETITION FOR CERTIORARI.

AUSTEN G. FOX,
JAMES H. PEIRCE,
GEORGE P. FISHER, JR.,
WM. HENRY DENNIS,
Attorneys and of Counsel for Petitioners.

Rollins Bros., Law Printers, 358 Dearborn St., Chicago.

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IN THE

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,
Petitioners,

vs.

WYCKOFF, SEAMANS & BENEDICT,
Respondent.

**Petition for Writ of Certiorari requiring the United States Circuit Court of Appeals for the Second Circuit to certify to the United States Supreme Court for its review and determination the case of Wyckoff, Seamans & Benedict, Complainant-Appellee, vs. Howe Scale Company of 1886, Defendant-Appellant.**

*To the Supreme Court of the United States of America:*

Your petitioner, Howe Scale Company of 1886, a corporation organized and doing business under and by virtue of the laws of the State of Vermont, and your petitioner, Fay-Sholes Company, a corporation organized and doing business under and by virtue of the laws of the State of Illinois, respectfully show to this court as follows, viz.:

1. That complainant, Wyckoff, Seamans & Benedict, is a corporation organized under the laws of the State of

New York with its principal place of business at Ilion in said state, and is engaged in the manufacture and sale of typewriting machines which for many years past have been generally known by the names "Remington" and "Remington Standard," and have been invariably marked conspicuously with the name "REMINGTON," with the name "REMINGTON STANDARD TYPEWRITER," with a large RED SEAL trade-mark and with the name and address "REMINGTON STANDARD TYPEWRITER, MANUFACTURED BY WYCKOFF, SEAMANS & BENEDICT, ILION, N. Y., U. S. A." That the business of the manufacture of said typewriting machines under said names "Remington" and "Remington Standard Typewriter," and designated by said Red Seal trade-mark, was begun by the corporation E. Remington & Sons, of Ilion, N. Y., which corporation long prior thereto had achieved a world-wide reputation for its firearms, sewing machines, agricultural implements and other machinery. That complainant, Wyckoff, Seamans & Benedict, acquired its title to such part only of the business of said corporation E. Remington & Sons as concerned the manufacture and sale of typewriting machines by virtue of an assignment reserving to said E. Remington & Sons the right to reengage in the manufacture and sale of typewriting machines at any time after ten years from its date, viz., March 22, 1886.

2. That your petitioner, Fay-Sholes Company, was incorporated under the laws of the State of Illinois in April, 1897, under the name Remington-Sholes Company, and at such time succeeded to the business (including good-will, trade-marks, etc.) of the Remington-Sholes Typewriter Company, a corporation organized un-

der the laws of the State of Illinois in the year 1894. At the time of the bringing of this suit, your petitioner, Howe Scale Company of 1886, was acting as the general sales agent for the United States for said corporation Remington-Sholes Company, and as such sales agent had its offices in various cities throughout the United States.

3. That the capital stock of said Remington-Sholes Typewriter Company at the time of its organization consisted of 1,500 shares of the par value of one hundred dollars each, and these shares were subscribed for as follows, viz.: Franklin Remington, 561 shares; Carver Remington, 562 shares; Zalmon G. Sholes, 374 shares; Norman Hapgood, one share; C. L. Hamill, one share, and L. Thompson one share, and upon the completion of the organization of said Remington-Sholes Typewriter Company the following officers were chosen, viz.: Charles N. Fay, president; Franklin H. Head, vice-president; Franklin Remington, general manager; Zalmon G. Sholes, superintendent, and Franklin Remington, Carver Remington, Zalmon G. Sholes and Messrs. Fay and Head, directors. That the typewriting machine, for the manufacture of which said Remington-Sholes Typewriter Company was so organized, was the invention of said Zalmon G. Sholes, and that said Franklin Remington, prior to the organization of said corporation, had devoted many months and had expended some fifteen thousand dollars in the reconstruction of said typewriting machine and in enlisting capital for its manufacture. That not only was the organization of said Remington-Sholes Typewriter Company effected by said Remingtons and said Sholes, but from the beginning of said enterprise said Franklin Remington and said Sholes devoted their entire time and energies to the management

of the business of said corporation. That the father of said Zalmon G. Sholes was recognized as a pioneer inventor of typewriting machines and the father of said Carver and Franklin Remington was at one time president of the corporation E. Remington & Sons, which corporation had acquired a world-wide reputation for its manufacture of firearms, sewing machines, etc., and which corporation in 1873 began the manufacture of typewriting machines embodying the inventions of the father of said Zalmon G. Sholes.

4. Your petitioners further show that the typewriting machines placed upon the market by said Remington-Sholes Typewriter Company were extensively advertised as and known by the name "Remington-Sholes" and were conspicuously marked with the name and address "Remington-Sholes, Chicago," but after the summer of 1887 and after the business of said Remington-Sholes Typewriter Company had been acquired by the Remington-Sholes Company, all the typewriting machines manufactured by said last-named company and sold by your petitioner, Howe Scale Company of 1886, were conspicuously marked with the registered trade-mark "Rem-Sho" and with the name and address "Remington-Sholes Company, Mfrs. Chicago", and with no other mark or words. That all advertising material (circulars, posters, business cards, etc.) issued by said Remington-Sholes Typewriter Company, by said Remington-Sholes Company and by their agents, have been invariably accompanied by the full name and address of said companies conspicuously displayed thereon. That each machine placed upon the market by said Remington-Sholes Typewriter Company from the inception of its business and by its successors up to the middle of the year 1900 (nearly two years

after the filing of the bill of complaint in this cause) had a highly ornamental bronze frame of very unique design, differing so widely in shape and coloring from the conventional black enamel frames invariably used for complainants' and other typewriting machines that the confusion of the machines of said Remington-Sholes Typewriter Company and its successors with machines of complainants' manufacture was impossible by persons familiar with the appearance of complainants' machines. That said Remington-Sholes Typewriter Company, its successors and your petitioner, Howe Scale Company of 1886, have at all times scrupulously sought to avoid any confusion as to identity of their machines with machines of complainants' manufacture and have uniformly and industriously pointed out by catalogues and other advertising matter that their machines had no connection whatever with the typewriter of complainant's manufacture. That in furtherance of said purpose, your petitioners have, from the inception of their business, distributed through their various offices, and in vast numbers, catalogues containing, *mutatis mutandis*, the following statement:

> "In Regard to Our Name. The question is often asked, 'What connection has the Remington-Sholes Company with the Remington Standard Typewriter?' We answer, none whatever. The 'Rem-Sho' Typewriter is manufactured by the Remington-Sholes Company in Chicago, Ill., U. S. A. It originated in the brain of Mr. Zalmon G. Sholes, a son of the original inventor of the Remington Standard Typewriter. In 1893 Mr. Sholes came to Mr. Remington, a son of the original manufacturer of the well-known typewriter which bears his name, and laid his plans and the results of his work before him. The two formed a partnership and began at once to develop the typewriter with which they are now identified. Later, a Company was formed of strong capitalists to manufacture the machine and

put it on the market, since when it has been tested by four years' use and the Nos. 2, 3, 4 and 5 Models brought out under the personal supervision of Mr. Fay.

"We state then, emphatically, that this Company has no connection whatever with that well known and excellent machine, the Remington Standard Typewriter, and caution all possible customers against confusing the 'Rem-Sho' with that machine or any other.

"We are sometimes asked about the right of the Messrs. Remington and Sholes to the use of their own names in connection with typewriters. In answer we would say that the law is absolutely clear that every man has the right to use or permit the use of his own name (which is his birthright) in business, provided it is so used as not to deceive. In order to prevent deception *absolutely*, we have made our machine, in finish and outward appearance, entirely unique, and in all public advertisements, signs, marks and statements, we are careful to set forth that it must not be confounded with any other. This is in accordance with law and good faith, and renders our use of these names morally and legally unassailable."

5. Your petitioner, Fay-Sholes Company, further shows that for several years prior to the bringing of this suit in September, 1898, the typewriting machine manufactured by your said petitioner's predecessor, Remington-Sholes Typewriter Company, and as well also the typewriting machines of complainants' manufacture, were being extensively sold not only in all the principal cities of this country, but also in the principal cities of most of the civilized countries throughout the world. That in the year 1896, while the machine manufactured by said Remington-Sholes Typewriter Company and marked with the words "Remington-Sholes, Chicago," were being sold in the German Empire by one Henry Newald, a suit was there brought against said Newald

by Glogowski & Co., of Berlin, Germany, who were agents for complainant, Wyckoff, Seamans & Benedict, the said Glogowski & Co. having registered the name "Remington" as a trade-mark for typewriting machines in the German Patent Office; that said suit went from the lower courts of the German Empire to the German Imperial Supreme Court and it was there held that in view of the history of the Remington-Sholes Typewriter Company as disclosed by the proofs in said cause, the name "Remington-Sholes" could be properly and lawfully used upon machines manufactured by said Remington-Sholes Typewriter Company, as will appear by a translation of the opinions of said German courts accompanying this petition and marked "Exhibit A," verified copies of such opinions and translations thereof having been served upon complainant's counsel during the taking of the testimony in this cause.

6. That in September, 1898, complainant, Wyckoff, Seamans & Benedict, filed its bill of complaint in this cause against your petitioner, Howe Scale Company of 1886, in the United States Circuit Court for the District of Vermont; that said bill of complaint alleged *inter alia* that complainant's predecessor in business had registered the words "Remington" and "Remington Standard" as trade-marks for typewriting machines in the United States Patent Office on or about October 23, 1888, and made profert of said original certificates of registration or duly authenticated copies thereof and asserted that said registered trade-marks were duly assigned and transferred to and owned by said complainant and that said trade-marks "Remington" and "Remington Standard" were of value far in excess of one hundred thousand dollars; that in said bill of complaint it was further al-

leged *inter alia* that your petitioner, Howe Scale Company of 1886, had imitated and infringed upon the trade-mark and trade-name "Remington" to which said complainant in said bill of complaint asserted an exclusive right; and in said bill of complaint it was further alleged *inter alia* that your petitioner, Howe Scale Company of 1886, had been guilty of unfair trade competition by using in connection with the sale of typewriting machines the abbreviated name "Rem-Sho" and the corporate name of said Remington-Sholes Company. That after the filing of the bill of complaint in said cause an answer thereto was duly filed on behalf of your petitioner, Howe Scale Company of 1886, and after replication filed by complainant, and after testimony to the extent of some 1,500 printed pages was taken, the cause came on for hearing on May 28th, 1901, before his Honor Hoyt H. Wheeler, United States Circuit Judge for the District of Vermont, and was argued by counsel for complainant and defendant; that after taking said cause under advisement his Honor Judge Wheeler rendered an opinion (a copy of which accompanies this petition and is marked "Exhibit B") and entered a decree (a copy whereof accompanies this petition and is marked "Exhibit C") by which it was decreed *inter alia* that your petitioner, Howe Scale Company of 1886, and all persons acting in privity with it, be enjoined from making use of the designation "Remington" or "Rem" as the name or part of the name of any typewriting machine whatsoever manufactured by said Remington-Sholes Company or by defendant or by any other person or concern, and from in any manner whatsoever making use of the word "Remington" or the abbreviation "Rem" as the whole or as a part of any name or designation whatsoever which shall be marked upon or affixed or ap-

plied by any means to typewriting machines manufactured and sold by said Remington-Sholes Company or by defendant or by any person or concern. That after the entry of said decree made by his Honor Judge Wheeler as aforesaid your petitioner, Howe Scale Company of 1886, took an appeal in due form of law to the United States Circuit Court of Appeals for the Second Judicial Circuit. That said appeal came on for hearing before their Honors Judges Wallace, Lacombe and Coxe at the city of New York on the 7th day of February, 1903, and at such time was argued by counsel for complainant and defendant; that after the argument of said appeal said cause was taken under advisement by said Court of Appeals until the 9th day of April, 1903, when opinions were rendered by the several judges of said Court of Appeals, copies of which opinions accompany this petition and are marked "Exhibit D;" that by said opinions the decree of the lower court was found to be erroneous and was reversed in so far as said lower court had enjoined your petitioner, Howe Scale Company of 1886, from the use of the trade-mark "Rem-Sho," but the opinions of Judges Lacombe and Coxe found that the decree of the lower court was correct in so far as it enjoined your petitioner, Howe Scale Company of 1886, from the use of the name "Remington" as ordered by the decree of said lower court; that the dissenting opinion of his Honor Judge Wallace found all the issues of the cause in favor of your petitioner, Howe Scale Company of 1886. That on the 22nd day of April, 1903, an order for mandate (a copy whereof accompanies this petition and is marked "Exhibit E") was entered by said Court of Appeals in conformity with

said opinions of said Judges Lacombe and Coxe, said order being as follows, viz.:

> "It is now hereby ordered, adjudged and decreed that the decree of said Circuit Court be and it hereby is reversed without costs, and cause remanded with instructions to decree in favor of complainant only as to the name 'Remington.'"

That after the entry of said order of said Court of Appeals and the issuance of the mandate thereon, his Honor Judge Wheeler on the 23rd day of June, A. D. 1903, entered a final decree in the Circuit Court of the District of Vermont in which it was decreed *inter alia* that the sale by your petitioner, Howe Scale Company of 1886, of typewriting machines manufactured by or for said Remington-Sholes Company under the name of or as "Remington-Sholes" typewriters constitutes a fraudulent infringement and invasion of the rights of the complainant and an unfair and inequitable competition which equity will restrain, and that your petitioner, Howe Scale Company of 1886, and all others acting in privity with it, should be enjoined from in any manner whatsoever making use of the word "Remington" as the whole or as a part of any name or designation whatsoever which shall be marked upon or applied to typewriting machines manufactured or sold by said Remington-Sholes Company or any other person, and that complainant, Wyckoff, Seamans & Benedict, recover the costs of suit.

And your petitioners further show that the language of the decree of said Circuit Court declaring that your petitioner, the Howe Scale Company of 1886, has been guilty of "a fraudulent infringement and invasion of the rights of complainant and an unfair and inequitable competition" has been widely published and advertised by

complainant both in this and in foreign countries to the great injury of the fair fame and business reputation of your petitioner, the Fay-Sholes Company.

7. Your petitioners further show that the defense of this cause has from its inception been conducted wholly at the expense of your petitioner, Fay-Sholes Company, and by counsel of its own selection; that after the decision of his Honor Judge Wheeler enjoining the use of the name "Remington-Sholes" and the trade-mark "Rem-Sho" as aforesaid, and because of said decision your petitioner, Fay-Sholes Company (then bearing the name Remington-Sholes Company), ceased to mark its typewriting machines with the registered trade-mark "Rem-Sho" and with the inscription "Remington-Sholes Company, Mfrs. Chicago," and caused its corporate name to be changed from Remington-Sholes Company to Fay-Sholes Company, in keeping with the laws of the State of Illinois.

8. And your petitioner, Fay-Sholes Company, further shows that in October, 1901, complainant, Wyckoff, Seamans & Benedict, filed its bill of complaint in the United States Circuit Court for the Northern District of Illinois against your petitioner, Fay-Sholes Company (at that time still bearing the name Remington-Sholes Company); that said bill of complaint is based mainly upon the alleged infringement and violation by your petitioner, Fay-Sholes Company (while trading under the name Remington-Sholes Company), of complainant's alleged trade-mark "Remington" by the use by your petitioner, Fay-Sholes Company, upon and in connection with the sale of its typewriting machines of its registered trade-mark "Rem-Sho" and the inscription "Remington-Sholes Company, Mfrs. Chicago" and for alleged unfair

trade competition arising chiefly from the use by your petitioner, Fay-Sholes Company, of its trade-mark "Rem-Sho" and of its former corporate name "Remington-Sholes Company" in connection with the sale of typewriting machines of your petitioner's manufacture. That after the answer of your petitioner, Fay-Sholes Company, was filed to said bill of complaint, an order was entered in said cause staying proceedings therein until the determination of this present cause in the United States Circuit Court of Appeals and in the United States Supreme Court. But in said order so staying said cause it was provided that if this present cause resulted in favor of complainant, Wyckoff, Seamans & Benedict, the said cause in which said order was so entered should proceed at once to an accounting; that said order so entered in said cause is still in force.

9. Your petitioner, Fay-Sholes Company, further shows that for a number of years past its typewriting machines have been extensively sold in many foreign countries and particularly in the German Empire, in France, Denmark, Norway, Russia and Austria by dealers in said several countries who purchased said typewriting machines from an independent German corporation bearing the name "Remington-Sholes Company, m. b. H." (signifying "limited"), which said German corporation in turn purchased said machines from your petitioner, Fay-Sholes Company; that said dealers in said foreign countries have been threatened with litigation by complainant, Wyckoff, Seamans & Benedict, or its foreign agents or representatives because of the use upon typewriting machines (manufactured by your petitioner, Fay-Sholes Company, while trading under the name Remington-Sholes Company) of the trade-mark "Rem-Sho" and the

inscription "Remington-Sholes Company, Mfrs. Chicago," and one suit is now pending in Holland against a dealer at Rotterdam for said alleged wrongful use of said trade-mark "Rem-Sho" and said inscription "Remington-Sholes Company, Mfrs. Chicago" upon typewriting machines manufactured by your petitioner, Fay-Sholes Company; that your petitioner, Fay-Sholes Company, fears that notwithstanding the said favorable decision of the German Imperial Supreme Court serious injury may result to dealers in Germany and other foreign countries, in machines manufactured by your petitioner, Fay-Sholes Company, and to the foreign trade of your said petitioner if the decision of said Circuit Court of Appeals for the Second Circuit in this cause is allowed to stand uncorrected.

10. Your petitioners further show that in the opinion rendered by his Honor Judge Lacombe of the United States Circuit Court of Appeals for the Second Circuit in the above-entitled cause (the conclusions of which opinion were concurred in by his Honor Judge Coxe) it is stated that "we do not find in this voluminous record sufficient evidence that defendant has itself done anything to promote confusion in the mind of the public, except to use the name 'Remington' on its machines, and in its literature." Your petitioners submit that said opinion and said decree of said Court of Appeals for the Second Circuit are predicated upon the ground that notwithstanding the fact that the individuals Messrs. Remington and Sholes had an absolute right to use their own names in business, they had no right to give said names to the corporation organized by them for the express purpose of manufacturing a machine due to their joint efforts, in which corporation they owned the greater part

of the stock, to which also they were devoting their whole time and energy and of which they were officers and directors. And your petitioners submit that such ruling by said Circuit Court of Appeals is in direct violation of the rulings of this Honorable Court, as heretofore repeatedly expressed in its decisions.

11. And your petitioner, Fay-Sholes Company, further shows, as bearing upon its right to use upon its machines the trade-mark "Rem-Sho" and the words "Remington-Sholes Company, Mfrs. Chicago," the following facts:

(1) For a number of years past corporate management has been regarded as the most effective form of business enterprise; (2) the designation of corporations by personal names is not only widespread, but is universally recognized as a legitimate use of personal names; (3) all other typewriting machines upon the market are manufactured by corporations; (4) nearly all of the many typewriting machines upon the market bear the personal names of the inventors or the manufacturers of such machines; (5) nearly all the corporations engaged in the manufacture of typewriting machines bear the same personal names as their machines; (6) the Remington-Sholes Typewriter Company was organized to manufacture a machine invented solely by Mr. Sholes and developed by the capital and personal labors of Mr. Franklin Remington; (7) that the family name of Remington has been world-famous in various lines of industry since long prior to the advent of the typewriting machine, and the father of Zalmon G. Sholes was a recognized pioneer inventor of typewriting machines. Wherefore your petitioner, Fay-Sholes Company, asserts that the adoption by it of the name Remington-Sholes Com-

pany as its corporate name was reasonable and fair and was in no manner an act of unfair or inequitable competition with complainant.

12. Your petitioners submit that if it be true that an individual has an absolute right to use his name in fair and honest manner in the conduct of his own business he has a right to bestow such name upon a corporation organized by him and to which his whole capital and industry are devoted. And your petitioners submit that inasmuch as defendant here has not (as found by said Court of Appeals for the Second Circuit) "done anything to promote confusion in the minds of the public except to use the name Remington" (and that it has invariably used said name Remington only in conjunction with the name Sholes in the hyphenated name Remington-Sholes), and inasmuch as the giving of the personal names "Remington" and "Sholes" to said Remington-Sholes Company was an ordinary use of such names sanctioned by long trade custom, it would be a manifest wrong unto your petitioner, Fay-Sholes Company, to be deprived of the right to use the corporate name Remington-Sholes Company bestowed upon it by its officers and directors, Messrs. Remington and Sholes.

13. That while your petitioners may have a right to bring this cause to this court by appeal from the decision of said Circuit Court of Appeals for the Second Circuit because of the fact that the complaint in this cause is founded in part at least upon the alleged infringement of complainant's registered trade-mark "Remington," nevertheless your petitioners fear that the remedy afforded by such appeal might not be as full and complete as may be given by this court if this present petition be granted, because it may be alleged that such appeal if taken would

raise simply the technical question of the infringement of complainant's registered trade-mark and might not raise the broader question as to whether or not your petitioners have been guilty of unfair competition in the use of the corporate name "Remington-Sholes Company;" wherefore your petitioners show that if this petition is granted a more full and adequate measure of relief may be afforded your petitioners than if this cause were brought to this court by appeal.

14 And your petitioners further aver that this court has repeatedly held and more particularly in the cases of *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169; *Brown Chemical Co.* v. *Myer et al.*, 139 U. S., 540, and *Elgin National Watch Co.* v. *Illinois Watch Case Co.*, 179, U. S., 665, first, that an ordinary surname can not be appropriated as a trade-mark by any one person against others of the same name who are using it for a legitimate purpose; and second, that where an alleged trade-mark is not in itself a good trade-mark, yet has come to denote the particular manufacturer or vendor, relief against unfair competition will be restricted to requiring the use of the word by another in such manner as will prevent misapprehension on the question of origin. That in the present cause the use of the surname "Remington" in the name "Remington-Sholes Company" is manifestly a legitimate use of such surname and that the use of the inscription "Remington-Sholes Company, Mfrs. Chicago" is a use in such manner as to clearly avoid misapprehension on the question of origin. But that notwithstanding said decisions of this court clearly authorizing your petitioners to use the surname "Remington" in the manner above stated, nevertheless your petitioners will be deprived of said right if the decision rendered in this cause by the Circuit

Court of Appeals for the Second Circuit and the final decree of said Circuit Court for the District of Vermont are allowed to remain uncorrected.

15. And your petitioners further show that a large part of the evidence produced in this cause on behalf of complainant related to advertisements and acts in foreign countries by certain dealers who were in no manner whatever connected with nor under the control of your petitioners or either of them, but who had purchased outright from an independent German company typewriting machines manufactured by your petitioner, the Fay-Sholes Company (then named the Remington-Sholes Company). That your petitioner, Howe Scale Company of 1886, by its counsel, duly objected to said evidence and at the hearing of this cause before the lower court moved that said evidence be disregarded, but the lower court admitted said evidence notwithstanding such objection and motion. That your petitioner, Howe Scale Company of 1886, upon the appeal of this cause to the Circuit Court of Appeals assigned as error the admission of such evidence but said assignment of error was apparently ignored by said Court of Appeals. That your petitioners aver that under the rulings of this court it was the duty of said Circuit Court and of said Circuit Court of Appeals to have sustained the motion of your petitioner, Howe Scale Company of 1886, and to have disregarded said evidence objected to as aforesaid and to have taxed the costs of such evidence against the complainant in this cause.

16. And your petitioners aver that the present case is one in which it is proper for this court to issue a writ of *certiorari* for the following reasons, among others:

(*a*) Because machines of both complainant and your

petitioner, the Fay-Sholes Company, go into the markets of the world with their respective marks and inscriptions thereon as before described, and the conflict between the before-mentioned decisions of the German Imperial Supreme Court and of the Court of Appeals for the Second Circuit will work serious injury to the foreign trade of your petitioner, the Fay-Sholes Company.

(*b*) Because the decision by this court of the questions at issue in this cause will determine the decision of the United States Circuit Court for the Northern District of Illinois in the suit now pending therein and brought by complainant, Wyckoff, Seamans & Benedict, against the Remington-Sholes Company, and thus will avoid a multiplicity of suits.

(*c*) Because this court having heretofore repeatedly decided that no one can have the right to the exclusive use of a personal name as a trade-mark, the decision rendered in this cause by the Circuit Court of Appeals is in direct contravention of such ruling of this court; and because the final decree of the United States Circuit Court for the District of Vermont of June 23, 1903, declaring as it does that your petitioner, the Howe Scale Company of 1886, has been guilty of "a fraudulent infringement and invasion of the rights of complainant and an unfair and inequitable competition," is not only in contravention of the rulings of this court, but has placed a stigma upon the fair fame and reputation of your petitioners, from which your petitioners are entitled to be relieved.

(*d*) Because this court having decided that where an alleged trade-mark is not in itself a good trade-mark yet the use of the mark has come to denote the particular vendor, relief against unfair competition will only be awarded by requiring the use of such mark by another

to be in such manner as will prevent misapprehension on the question of origin; whereas the decision rendered in this cause by the Court of Appeals for the Second Circuit, denying as it does your petitioner's right to place the inscription "Remington-Sholes Company, Mfrs. Chicago" upon its machines, is in direct contravention of the rulings of this court; and because, even if complainant were alone entitled to use the name "Remington" as a trade-mark for typewriting machines, nevertheless your petitioners have not trespassed upon such right since they have used only the names "Remington-Sholes" and "Remington-Sholes Compaany" (never the name "Remington" alone), both of which names differ so widely in appearance and sound from the name "Remington" alone that no purchaser, using the ordinary intelligence and discrimination which under the decisions of this court he is required to use, could mistake your petitioner's machine for complainant's. (*Coats* v. *Merrick Thread Co.*, 149 U. S., 562; *Corbin* v. *Gould*, 133 U. S., 308.)

(*e*) Because inasmuch as the use by Messrs. Remington and Sholes of their surnames in the corporation in which they were officers and stockholders was an ordinary, fair and reasonable use and one sanctioned by long-established custom, the decision rendered in this cause by the Circuit Court of Appeals for the Second Circuit enjoining such use is in manifest violation of your petitioners' rights and in contravention of the rulings of this court.

(*f*) Because there exists a conflict and lack of uniformity in the decisions of the various United States Circuit and state courts as to the right of an individual to bestow his name upon a corporation organized and managed by him, and the question as to the right of an individual to bestow his name upon such a corporation

when the name so bestowed resembles that of another engaged in the same business (which right is plainly denied by the decision rendered in this cause by a majority of the judges of the Circuit Court of Appeals for the Second Circuit) is a question that has not been passed upon by this court and is one in which the public is largely interested in view of the common practice existing at the present day of bestowing personal names upon corporations.

Wherefore your petitioners respectfully pray that a writ of *certiorari* may be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Second Circuit commanding the said court to certify and send to this court on a day certain to be therein designated a full and complete transcript of the record of all proceedings of the said Circuit Court of Appeals in this cause that such proceedings therein may be had as to this Honorable Court may seem just and that the said decree of said Circuit Court of Appeals in this cause rendered may be reversed by this Honorable Court.

And your petitioners will ever pray, etc.

HOWE SCALE COMPANY OF 1886,
By GEO. P. FISHER, JR.,
*Its Attorney and Counsel.*

FAY-SHOLES COMPANY,
By CHARLES N. FAY, President.

We certify that, in our opinion, the foregoing petition is well grounded in matter of law and proper to be heard.

AUSTEN G. FOX,
JAMES H. PEIRCE,
GEORGE P. FISHER, JR.,
WM. HENRY DENNIS,
*Of Counsel for Petitioners.*

*State of Illinois, County of Cook, ss.*

Charles Norman Fay, being duly sworn, says that he is the president of the Fay-Sholes Company, the petitioner of that name mentioned above; that he has read the foregoing petition and knows the contents thereof, and that the facts therein stated are true to the best of his information and belief.

CHARLES N. FAY.

Sworn to and subscribed before me this .... day of October, 1903.

ALBERTA ADAMICK,
[SEAL.] *Notary Public, Cook County, Illinois.*

## EXHIBIT A.

**(Decisions of German Courts.)**

## UNITED STATES CIRCUIT COURT,

DISTRICT OF VERMONT.

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WYCKOFF, SEAMANS & BENEDICT
vs.
THE HOWE SCALE COMPANY OF 1886.
} In Equity.

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**TRANSLATION OF OPINIONS OF THE GERMAN COURTS IN LITIGATION REGARDING THE NAME REMINGTON-SHOLES.**

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OPINION OF THE GERMAN KOENIGLICHES KAMMERGERICHT.

Rendered:
July 3, 1897.
(signed) KRUG,
Court Clerk.

IN THE NAME OF THE KING.

The case of Henry Newald of Berlin, defendant, cross-complainant and appellant, represented by attorney Fuchs I of Berlin,

*against*

The firm, Glogowski and Co., plaintiff, cross-defendant, and appellee, represented by attorney Dr. E. Fuchs at Berlin.

In regard to the infringement of the trade mark right, the "10 Civilsenat des Konigliches Kammergericht" (Su-

preme Court of the Kingdom), have, with the concurrence of the Supreme Justice Busch chairman, Supreme Justice Rabe and Nehse, District Judges Delbruch and Kubler, decided that:—

The judgment rendered March 19, 1897 by the "vierten Kammer fur Handelssachen des Koniglichen Landgerichts *I*" at Berlin, be altered, as follows:—

1. The petition of the plaintiff is denied.

2. As to the cross-complaint, it is decreed that the plaintiffs acknowledge that they are not entitled to enjoin the defendant from selling the typewriters of the Remington Sholes Typewriter Co., or the casing or enclosures therefor, upon which this firm name is marked, nor from using this firm name in connection with advertisements and the like in the course of business.

The further prayer of the cross-complaint of the defendant and appellant is denied.

3. The costs of court are divided between the parties, the other costs of the parties are set-off against one another.

4. As security for the performance of judgement (2), the plaintiff shall furnish a bond of 10,000 M. payable in gold or in notes of the German Empire or the Prussian States, such bond to be conditioned upon the execution of the judgement.

## Statement of Facts.

The plaintiffs are engaged in this city in the business of dealing in American typewriters, which they obtain from Wyckoff, Seamans & Benedict at New York. They allege that they sell in their own name and on their own account, whereas the defendant claims that they sell said machines simply as agents of the above mentioned American concern.

On Feby. 8th, 1896 the word "Remington" was entered as a Trade-Mark in the Register of the Imperial Patent Office at Berlin for and on behalf of the predecessors of plaintiffs Glogowski & Son; said trademark is in-

tended for typewriters and their parts, as well as incidentals; the line of business in which said trademark is to be used, is said to be "The sale of the aforementioned articles." This trademark has become the property of the plaintiffs. The certificate of registry introduced by the plaintiffs (Record P. 233) is considered.

The plaintiffs allege that with the consent and at the instance of Wyckoff, Seamans & Benedict they have caused this trademark to be registered; in support thereof they have introduced a copy of a document dated Oct. 3, 1894 marked "Power of Attorney", to which reference is made (Record P. 40.)

The defendant carries on in this city the sales of American typewriters made by the Remington-Sholes Typewriter Co. at Chicago. He himself states that he carries on such sales as the employe of said concern and on its account. The typewriters of said American concern introduced into commerce by the defendant, are marked with the full name of said house; such name appears likewise on the advertisements and price lists issued by the defendant; a specimen of such an advertisement is introduced for inspection (Record p. 19) and is considered.

The plaintiffs believe that the defendant, in carrying on such business, violates their trademark rights and moves for a decree as follows:

*a*) That the defendant, on pain of fine to be imposed in each case of violation, refrain from placing the word "Remington" either singly or in connection with other words, upon any typewriters or casings or coverings thereof, and from circulating in commerce any typewriters so marked, and from using such marks in connection with any advertisement, price-lists, letters, recommendations, bills, etc.

*b*) That the defendant remove the mark "Remington" from all the typewriters, price-lists, letters of recommendation and other printing matter in its possession, or in case such removal cannot be effected in any other way, then de-

stroy all typewriters and utensils bearing the aforesaid marks. To award immediate execution of the judgment on giving security.

The defendant makes a point as to his competency to be sued, because he does not sell in his own name, but as an employe of the Remington-Sholes Typewriter Co.

The defendant further insists that he has a right to use, in connection with typewriters consigned by said concern, the business name containing the word "Remington"; that said word is a proper name; that two men Franklin Remington and Carver Remington are interested in said business; that they are descendants of the first manufacturer of typewriters, Samuel R. and that years ago they associated themselves with Zalmon Sholes in a concern for the manufacture of typewriters under a business name containing the words Remington and Sholes; that said concern has produced a typewriter totally different in construction from all others; that for many years they have been selling these machines all over the world under such business name, and that its right to place such business name upon its machines has never yet been contested; that the competing house of Wyckoff, Seamans & Benedict in the United States has never sought to prevent it from placing its business name upon its articles; that only when said Wyckoff, Seamans & Benedict were about to establish a branch at Berlin, they procured the plaintiffs to have said trade-mark registered; that according to S. 13 of the trademark act the trademark rights thereby acquired would not, however prevail as against the Remington-Sholes Typewriter Co. In support of the allegation that Franklin Remington and Carver Remington are interested in said concern, the defendant has produced the affidavits of Franklin Remington and Zalmon G. Sholes, dated Sept. 3, 1896, which are referred to (see translation pp. 198-201 of record).

The defendant further insists that the plaintiffs are not legally entitled to the trade-mark Remington and under S.

9 of the trademark act he files his cross complaint asking that said trademark be stricken from the register on the ground that its contents are repugnant to actual facts and give rise to a deception. For he says that Remington is a proper name; that such was the name of the first manufacturer of typewriters at N. Y. the plaintiffs Glogowski & Co. or the partners of said firm do not bear that name and are not entitled to its use; nor has the house of Wyckoff, Seamans & Benedict in whose products the plaintiffs are dealing here, any right to use the word Remington as a trademark, as no member of the Remington family has ever permitted them to use such name for their products; that the word Remington gives rise to a deception, inasmuch as the purchasing public may believe that only from the plaintiffs may they obtain articles coming from the famous works of the first manufacturer of typewriters.

The defendant thus moves to dismiss the complaint, and he also files his cross-complaint moving as follows:

*a*) To decree that the trademark Remington entered for the plaintiffs in the trade-register of the Imerial patent office be stricken out therefrom or that the plaintiffs be made to consent to such striking out.

*b*) To order the plaintiffs to acknowledge that they are not entitled to prohibit the defendant from carrying on the sale of machines made by the Remington-Sholes Typewriter Co., and their casings and covers marked with said business name nor from using said firm name in connection with advertisements or otherwise in the regular course of business.

To award immediate execution of the judgment on giving security.

Against the claim that the plaintiffs cannot by reason of this trademark prohibit the use of the proper name Remington for the goods of the Remington-Sholes Typewriter Co., the following points are made:

The name Remington contained in said business name

has been sneakingly appropriated, in order to unduly compete with the consignors of the plaintiffs; for Franklin Remington who joined said concern, had never theretofore constructed or sold any typewriter, nor had Carver Remington. In support hereof the plaintiffs refer to the affidavit of director C. W. Seamans at N. Y. and produce the affidavit of Thomas Richardson, dated June 23rd, 1896, of Silas W. Crandall, dated June 27, 1896, and of Clarence W. Seamans, dated Dec. 14th, 1895 (see translation record pp. 182-192, 194-196, 150-160). To these documents reference is made.

As regards the cross-complaint, as far as the same seeks to have the trademark of the plaintiffs stricken from the register, the plaintiffs state the following. They sell the machines of Wyckoff, Seamans & Benedict of N. Y. and at their instance have caused the word Remington to be registered as a trademark in connection with such sales, the manufacturers being legally entitled to affix said word to their manufactured articles. For the first typewriter factory has been conducted at New York under the name of E. Remington & Sons, they marked their products with the name Remington. This concern with its business name and all its rights has passed into the hands of the Standard Typewriter Mfg. Co.; the latter in consequence thereof changed its name to Remington Standard Typewriter Mfg. Co. and the last named concern with its business-name and all its rights finally passed into the hands of Wyckoff, Seamans & Benedict. This concern, therefore, has the right to mark its goods with the name Remington, it exercises this right in the U. S. and same has never been contested. In support of this contention the plaintiffs introduce an affidavit of Clark Seamans, dated Oct. 4, 1895 (pp. 38 and 39) of Wyckoff, Seamans & Benedict, dated Oct. 3rd, 1894 (P. 40) also the above mentioned affidavits of Clarence W. Seamans and Thos. Richardson, also the certificate of Judge Hardin of date Nov. 30, 1888 (pp. 104-106), the

affidavit of Elizabeth Remington (pp. 120-124), the certificates of registry by Benton J. Hall of date Oct. 23, 1888 (pp. 176-180) and by J. P. Fisher of date May 7, 1896 (p. 172.) Reference is had to all those documents.

The defendant contends that Franklin and Carver Remington have allowed the use of their names exclusively in connection with the Remington-Sholes Typewriter Co. He claims that Franklin Remington together with Zalmon Sholes have invented the typewriter named after them, that they started the company and took an active interest in its business; Franklin Remington is manager of the factory, whereas Carver Remington is only financially interested. As to the alleged right of Wyckoff, Seamans & Benedict to use the mark Remington it is insisted that they never acquired that right from any member of the Remington family, although they obtained the rights in the business-name of the Standard Typewriter Co. from the parent of Franklin and Carver Remington.

In the court below, by judgment of Kammer 4 fur Handelssachen des kgl. Landgerichts 1 of March 19, 1897 the cross-complaint was dismissed and judgment was rendered against the defendant in manner and form as demanded by the plaintiffs. As regards the facts, so far as not above stated, reference is made to the finding of facts in said judgment.

As ground of the above decision it is stated that it appears from the allegation of the parties that the defendant's motion to strike the trademark from the register is improper, because Wyckoff, Seamans & Benedict have the right to use that mark for their manufactured products. The decree against the defendant is based on the trademark protection due the plaintiffs, the defendant cannot avail himself of S. 13 of the trademark act, because being the general agent of Remington-Sholes Typewriter Co. it is not competent for him to enforce the rights in that business name on its own behalf.

The defendant has entered his appeal from said decree of April 15, 1897, on the 20th of April, 1897, and moves to modify said decree so as to dismiss the complaint and to find against the plaintiffs and cross-defendants according to the prayer of the cross-complaint. The defendant considers the reasoning of the first decision bad. If the defendant, though only the agent of the Remington-Sholes Co., can properly be sued, he may also avail himself of the provisions of the law beneficial to his principals. According to S. 13 of the act the plaintiffs case must fail because the machines bear only the names of the said Company. As to the cross-complaint, the statement contained in the opinion that the defendant has admitted, that the plaintiffs or their successors had acquired the business-name and right from a member of the Remington family, is incorrect, for the defendant has disputed this very point and so it appears in the statement of fact in said judgment. Defendant refers to the affidavits of Franklin and Carver Remington at Chicago to show that no member of the Remington family has ever granted the right to Wyckoff, Seamans & Benedict to use the name Remington in the course of business. The motion to strike the trademark of the plaintiffs from the register is, therefore, according to S. 9 of the act just.

The plaintiffs move that the appeal be dismissed. They argue several legal points in support of this motion. The statement by the defendant that he has only acted as the agent of the Remington-Sholes Co. they seek to contradict by a letter of Attorney Meissner of June 16, also by statements in the brief of the defendant of May 13, 1897 (record, vol. II P. 24 *et sec.*), as both documents speak of "the business of the defendant."

OPINION.

1. If that petition of cross-complaint which has for its object the cancellation of the trademark Remington registered for the plaintiffs must be granted, then the decision must be given, without further consideration against the plaintiffs. If this is the case, according to Sec. 12, sub sec. 2, of the act of May 12, 1894, as to trademark rights, the plaintiffs cannot now, nor against any previous infringement, exercise their right to an injunction. Therefore, it is first to be considered, whether or not, this part of the cross-complaint is well founded.

The motion to strike from the register is based on S. 9 of the act; in support thereof it is contended that the contents of the plaintiffs trademark Remington do not accord with actual facts and give rise to a deception. The competency of the defendant to bring this complaint to strike from the register, against the plaintiffs as the registered owners of said trademark, cannot, in the light of S. 9, be subject to any doubt. According to S. 9, No. 3, anybody may in a case like this, appear as plaintiffs, because the interests of the public require the nullification of deceptive trademarks.

But he who brings such nullification suit is bound to prove actual ground, in order to sustain it; he must allege and prove facts and circumstances, from which it must appear both that the trademark is repugnant to actual facts and also that its contents create a danger of deception. The facts alleged by the defendant do not justify these conclusions.

The defendant is correct in his contention that a trademark, which consists simply of a proper name, may be repugnant to actual facts. For the mark has direct reference to certain specified articles, it is intended to signify them as the articles of a definite concern. If a proper name is chosen, which to the purchasing public or the com-

mercial world generally suggests the inventor or producer of particularly useful and meritorious articles, the use of such proper name as a trademark to signify articles of a different producer or seller, may indeed conflict with actual facts.

The trademark Remington chosen by the plaintiffs is undoubtedly a proper name; a bearer of that name was the first one to construct typewriters adapted for practical use, the idea of practical typewriters is closely associated with that name. The plaintiffs Glogowski & Co. as proprietors of that trademark are not *personally* entitled to the use of that name. However it is incontestable, that the plaintiffs deal exclusively in the products of the American house of Wyckoff, Seamans & Benedict and that with a view to that business and with reference to the products of that house, they have caused the trademark to be entered in the register. If, therefore, the name Remington may be used as a trademark for those products without violating actual facts, then, in the case at bar, the idea of a deceptive trademark must be eliminated. In order to prove that these articles may lawfully be marked with the name Remington the plaintiffs allege that their manufacturers Wyckoff, Seamans & Benedict, are the immediate successors of that typewriter concern, which under the firm name and style of Remington & Sons was run by the first manufacturer, Samuel Remington. Among the numerous documents which the plaintiffs have introduced in support of their allegation as to that succession, the following are, under S. 403 Civil Code, considered competent evidence.

Three certificates numbered 1043, 1044 and 1045 respectively under the hand of Secretary of State, Richard C. Olney, of date March 11, 1896 (see translations pp. 171-175, 102-107 and 176-181 of record).

Two certificates, under the hand of Secretary of State Palmer, dated Feb. 29th, 1896 and April 23rd, 1896 re-

spectively (see translations pp. 164-168, and 128-140 record).

By these documents it is certified to that the Standard Typewriter Manufacturing Company has caused the word Remington to be entered as its trademark for typewriters in the trademark register at New York on Oct. 23rd, 1888, their predecessors E. Remington & Sons having marked their products with that word ever since 1880; said Company changed its name on Nov. 30, 1888, to Remington Standard Typewriter Manufacturing Company; the latter has become merged in the concern of Wyckoff-Seamans & Benedict, having assigned to said concern all its rights, titles, and interests, particularly also said registered trademark.

Under these circumstances it cannot be assumed that the use of the word Remington as a trademark for the typewriters manufactured by Wyckoff-Seamans & Benedict conflicts with actual facts. This word was intended as a suggestion that said concern has become the successor of the first manufacturing concern of Remington & Sons and continued to produce and sell machines which were made by said Remington & Sons under the same name. The defendant has not shown that these facts have been incorrectly stated by the plaintiffs. He states himself that Wyckoff, Seamans & Benedict acquired at the time from the father of the Remingtons the business-name and right of the Standard Typewriter Company. Their continuing to mark the products with the old name of Remington and causing said word to be protected as their trademark, does not violate actual facts.

It is true, the defendant contends that the Standard Typewriter Company never acquired the right to incorporate the name Remington into its business-name or to register a trademark containing that name, from the Remington family, or any member thereof, nor that any member of the Remington family has given that right to Wyc-

koff, Seamans & Benedict; in support of this contention the defendant refers to the brothers Franklin and Carver Remington at Chicago. These proofs, though they might otherwise have great weight, appear, however, irrelevant in view of the fact, that for the last nine years the Standard Typewriter Company has used the word Remington in its business-name without any molestation and that for the same space of time it has used the trademark Remington. For if Wyckoff, Seamans & Benedict have become the final successors of the old house of Remington & Sons and continue to manufacture and sell their product, then the old name Remington as a mark on such products cannot be regarded as intrinsically correct, although the members of the Remington family have not given their consent to the use of that name.

The facts cited by the American house of Wyckoff, Seamans & Benedict in support of their right to use the name Remington, may, however, avail the plaintiffs as well, if the question to be settled is whether the trademark conflicts with actual facts; for here we have to consider the name of an American manufacturer and also the articles obtained by the plaintiff from the United States; if the latter, without violating actual facts, may be marked with the name Remington in the United States, then it cannot be assumed that the same name used for the same product violates actual facts in this locality. At any rate, the defendant has not supplied the necessary proofs tending in that direction.

Nor has it been shown, that the adoption of the word Remington for the articles of the plaintiffs, creates any danger of deception. It would have been incumbent on the defendant to show, that the article sold by the plaintiffs under that trademark is not identical with the one which is suggested to the commercial world and the purchasing public by the name Remington; for in order that the motion to nullify may be sustained, the contents of the trademark

must, under S. 9 No. 3 of the act, be so deceptive, as to cause mistake regarding the kind and quality of the article. In this respect the defendant has failed to show any tangible grounds to support his motion to nullify.

These considerations have led us to conclude that the cross-complaint, so far as it seeks to have the trademark of the plaintiffs annulled, must be dismissed.

2. The complaint and the cross-complaint (*b*) bear such relation to each other, that if the complaint can be sustained, the cross-complaint must be dismissed and *vice versa*.

In deciding these matters we must start from the premise, that the articles which the defendant sells in this locality, are manufactured by the American house of Remington-Sholes Typewriter Co. at Chicago. Marked with the name of that house, they are introduced by the defendant into commerce, and that name may also be found upon the announcements and advertisements of the defendant. The plaintiffs take the position that by virtue of their trademark rights they may enjoin the Remington-Sholes Typewriter Co. from the use of that name. For two reasons this position cannot be regarded as sound.

In the first place, under SS. 12 and 20 of the act of May 12th, 1894, only such use of a registered trademark can be denied to third persons, as may cause mistakes or confusion about commercial articles; if under the existing facts, such danger is out of the question, then there can be no infringement of the trademark. This principle must be particularly adhered to in the case of a single word used as a trademark. After such a word has been registered its use in commercial life is not necessarily to be condemned, but such use is only so far improper as it may give rise to the possibility of a mistake or deception. According to this principle, the plaintiffs cannot, in the case at bar, be granted the right to enjoin the defendant for their trademark consisting of the one word Remington, cannot be con-

fused with the appellation "Remington-Sholes Typewriter Company," even by purchasers that would not pay attention to the particulars of the trademark. This is not an insignificant distinction, one that would but little effect the total impression produced by the trademark but a material and striking difference barring all danger of a mistake.

In the second place, the defendant to defeat whatever rights the plaintiffs may have to an injunction, may properly avail himself of the saving clause in S. 13 of the act of May 12, 1894.

The court below denied to the defendant, as the general agent of the Remington-Sholes Typewriter Co. at Chicago, the right to enforce the protection of this trademark. We are unable to sustain this decision. No matter whether the defendant—as he himself alleges—is an employe of said American house or—as the plaintiffs say—he does business on his own account; in either event it is competent for him to use, in Germany, the American business-name in connection with the goods of the American concern in which he deals exclusively. In the first place such trademark protection may be derived from S. 23 subsec. 1, of the act. According to the proclamation of the Chancellor of Sept. 22, 1894 (see Reichsgesetzblatt P. 521) the same protection is granted to German trademarks in the United States as to American ones; therefore the protection of the law of May 12, 1894 extends likewise to American concerns, that have no branch in this locality. This protection must, without discrimination, extend to all the goods of the American house which are offered for sale in Germany, although there is no branch of said foreign house here; from this it follows that American goods which are offered for sale here upon commission or by merchants on their own account, are entitled to the same protection. The protection of the act of May 12, 1894 which is guaranteed by S. 23, subsec. 1, extends likewise to the right mentioned in S. 13, to affix the business name and information about the manner and

place of production, on goods, on their covers and to use them in the course of business. Accordingly, the defendant, who in this locality sells the typewriters of the Remington-Sholes Typewriter Co. of Chicago cannot be prohibited from affixing said business name upon the goods of said house nor from using it in the course of business, or announcements, advertisements, etc. It is not open to dispute, that the defendant deals only in typewriters made by said concern, and that he actually obtains his goods from said concern.

The plaintiffs have tried to establish that the Remington-Sholes Typewriter Co. has unlawfully and sneakingly appropriated the word Remington. They do not dispute that two descendants of the typewriter manufacturer Remington, Franklin and Carver Remington, were among the founders of the concern and are still interested in the same; but again they claim that Franklin and Carver Remington entered into said concern only pro forma, to bestow upon it an apparent right to use their name so well known in this line of business. However, whatever the plaintiffs have actually shown by way of foundation to their opposition to the use of the name Remington can in no wise give rise to the conclusion, that in this instance a business name has been sneakingly appropriated. The plaintiffs have confined themselves to the following statements: Franklin and Carver Remington are the sons of Samuel Remington, one of the copartners of the old firm of Remington & Sons; neither of them has ever had anything to do with the running of the business of said firm, or, before entering into the present business under the name of Remington-Sholes Typewriter Co. ever occupied himself with the manufacture of typewriters. But even if both these points had been fully established, it would not result therefrom, that the two Remingtons would not become real associates in said new house and were only pro forma engaged by said house, that their name might be used for improper purposes. For

it is quite possible, yea even probable, that they should have seriously devoted themselves to the business of their father, and acquired special knowledge, in which they were formerly lacking. To choose this business, in order to take advantage of the reputation attached to their name in this line of business, they have a perfect and indisputable right.

The motion of the plaintiffs for the taking of deposition of the manufacturer Seamans as to the above stated allegations of fact, is, therefore, denied. But if the plaintiff's objections to the right to use the business name of the Remington-Sholes Typewriter Co. must be overruled, they cannot, according to the above reasoning, be conceded the right sought by their complaint of enjoining the defendant; it follows from the dismissal of the complaint that a decree be entered against the plaintiffs granting the prayer of the cross-complaint (*b*) referring to the acknowledgment of the defendant's right, to use in the course of business the name Remington-Sholes Typewriter Co. as a trademark for the goods manufactured by them.

The decision as to the costs of suit rests on S. 88 Civil Code.

(signed) Busch, Rabe, Nehse, Kuhler
also for District Judge Dellbruck who is no longer a member of the "Kammergericht."

Promulgated.
Berlin the 15 October 1897.

(signed) Mittelstadt
(Seal of the Court) Court Clerk of the
"10 Civilsenats des Konigliche
Kammergerichts."

## Opinion of the German Reichsgericht.

In the Name of the Empire.

In the case of the firm, Glogowski & Co. of Berlin, plaintiff and revision plaintiff, represented by counsel, Patzki of Leipzig,

*against*

Henry Newald, Merchant, of Berlin, defendant and revision defendant, represented by counsel, Sachs of Leipzig.

The "Reichsgericht, (Supreme Court) zweiter Civilsenat," by the concurrence of the President, Dr. Binger and the "Reichgerichtsrathe," (Supreme Justices) Wielandt, Dr. Petersen, Rospatt, Fortsch, Remele, Petrey, at the oral hearing of Mar. 4, 1898 have handed down the decision:—

With regard to the judgment of the "zehnten Civilsenats des Koniglich Preussischen Kammergerichts," at Berlin of July 3, 1897, the following revision is remanded, the costs of the court of revision are placed upon the revision plaintiff.

"Von Rechts Wegen" (By reason of the law).

### Statement of Facts.

The firm Glogowski, plaintiffs, are engaged in Berlin in the business of dealing in American typewriters, which they obtain from the firm Wyckoff, Seamans & Benedict at New York. They allege, that these sales are carried on in their own name and for their own account, while the merchant Newald, defendant, claims, that they sell the machines simply as agents of the American firm.

On February 8, 1896, the word "Remington," was entered as a Trade-Mark, in the Imperial Patent Office at Berlin, and on behalf of the predecessors of the plaintiffs,

Glogowski and Son; said Trade-Mark is intended for typewriters and their parts, also for typewriter supplies; the line of business in which the mark is to be used, is said to be "The sale of the aforementioned articles." This Trade-Mark has been assigned to the plaintiff firm.

The defendant carries on at Berlin the sale of American typewriters of the firm, Remington-Sholes Typewriter Co. at Chicago. He himself states, that he carries on such sales as the employe of said concern and on its account. The plaintiff, against this, maintains that he carries on an independent business in his own name. The typewriters of said American concern introduced into commerce by the defendant, are marked with the full name of said concern, this firm's name is likewise printed in the advertisements and price lists of the defendant.

The plaintiff believes that the defendant, in carrying on such business, violates their trademark rights and moved for a judgment, as follows:—

*a*: That the defendant, on pain of fine to be imposed for each case of violation, refrain from placing the word "Remington," either singly or in connection with other words, upon any typewriter, casings or enclosures therefor, and from using such marks in connection with any advertisements, price lists, letters, recommendations, bills and the like.

*b*: That the defendant remove the mark "Remington" from all typewriters, price lists, letters of recommendation and other printed matter in his possession, or in case such removal cannot be effected in any other way, then destroy all typewriters and articles bearing the aforesaid mark.

The defendant raised the objection to the complaint that he is incompetent to be sued, since he does not sell here in his own name, but as the employe of the Remington-Sholes Typewriter Co.

The defendant further replied that he has a right to use, in connection with typewriters consigned by said concern,

the business name containing the word "Remington;" that said word is a proper name, and two bearers of this name, Franklin Remington and Carver Remington are associated with and interested in this firm; that they are descendants of the first manufacturer of typewriters, Samuel Remington; that years ago they had associated themselves with Zalmon Sholes in a concern for the manufacture of typewriters under a business name containing the words Remington and Sholes; that this concern has produced a typewriter wholly different from previous constructions; that, for many years, they have been selling these machines all over the world under said business name, and that its right to place such business name upon its machines has never yet been contested.

The defendant moved to dismiss the complaint; maintained that the plaintiff, under Sec. 9 of the law of May 12, 1894, was not properly entitled to the trademark Remington; and filed a cross-complaint and moved, as follows:—

*a*) to decree that the trademark Remington, registered for the plaintiff be cancelled.

*b*) to order the plaintiff to acknowledge that they are not entitled to prohibit the defendant from carrying on the sale of the machines made by the Remington-Sholes Typewriter Co. their casings and enclosures, which are marked with said business name, nor from using said firm name in connection with advertisements or otherwise in the regular course of business.

The "Konigliche Landgericht I," (territorial court) at Berlin, upon Mar. 9, 1897 decided against the defendant in accordance with the complaint, and the cross-complaint was dismissed as unfounded. Upon the appeal of the defendant, the "Konigliche Kammerigericht" (Supreme Court) at Berlin, by the judgment of July 3, 1897, upon which the review is taken, decided that:—

1. the prayer of the plaintiffs was refused.

2. a degree entered against the plaintiffs in accordance with the prayer (*b*) of the cross-complaint; the prayer (*a*) of the cross-complaint was refused; the costs of court were equally divided between the parties, the other costs of the parties were set-off against one another.

In the decision, it is stated, that that prayer of the cross-complaint, which has for its object the cancellation of the trademark registered for the plaintiff, is not well founded, and then continuing:

> "the complaint and the cross-complaint (*b*) are so related, that if the complaint can be sustained, the cross-complaint must be denied and *vice versa*.
>
> "In deciding these matters, we must note that the articles which the defendant sells in this locality, are manufactured by the American concern, Remington-Sholes Typewriter Co. at Chicago. Marked with the name of that concern, they are introduced by the defendant into commerce, and that name may also be found upon the business advertisements of the defendant. The plaintiff believes, that by reason of their trademark rights, they may enjoin the use of that firm name. This position of the plaintiff can not be regarded as sound, for two reasons.
>
> "First, under Sec's 12 and 20 of the act of May 12, 1894, only such use of a registered trademark can be denied to third persons, as may cause mistakes or confusion about commercial articles; if under the existing facts, such danger is out of the question, there can be no infringement of the trademark. This principle must be particularly adhered to in the case of a single word used as a trademark. After such a word has been registered, its use in commerce in all cases is not to be condemned, but is only so far improper as it gives rise to the possibility of a mistake or deception. According to this principle, the injunction cannot be granted to the plaintiff in the present case, for their trademark consisting of the single word Remington, can not be confused with the appellation 'Remington-Sholes Typewriter Co.' either by the trade or by the purchasing public, that does not give attention to the particulars of the trademark. This is not an insignificant distinction, one that would have little

effect upon the total impression produced by the trade-mark, but a materially different appearance is presented to the eye, barring all danger of mistake.

" In the second place, the defendant to defeat whatever rights the plaintiff may have to an injunction, may properly avail himself of the restriction of Sec. 13 of the act of May 12, 1894.

" The court below refused to permit the defendant, as the general agent of the Remington-Sholes Typewriter Co. at Chicago, to maintain the right to the use of this trade-name. We are unable to sustain the decision. It is immaterial whether the defendant—as he himself alleges—is an employe of said American concern, or—as the plaintiff states—he does business on his own account; in either event, he may use, in Germany, the American trade-name in connection with the goods of the American concern, in which he deals exclusively. In the first place, such trademark protection may be derived from Sec. 23, Subsec. 1, of the act. According to the proclamation of the Chancellor of Sept. 22, 1894 (see Reichsgesetzblatt P. 521) the same protection is granted to German trademarks in the United States as to American ones; therefore, American concerns, that have not branches here, share, to the full extent, the protection of the law of May 12, 1894. This protection must extend, without discrimination, to all the goods of the American concern offered for sale in Germany, although there is no branch of said American house here; from this it follows, that American goods which are offered for sale here upon commission or by merchants on their own account, are entitled to the same protection. The protection of the act of May 12, 1894, which is guaranteed by Sec. 23 Subsec. 1, extends likewise to the right mentioned in Sec. 13, to affix the business name and information about the manner and place of production on goods, on their enclosures, and to use the same in the course of business. Accordingly, the defendant, who offers for sale here, the typewriters of the Remington-Sholes Typewriter Co. of Chicago, can not be prohibited from affixing said business name upon the goods of said house nor from using it in the course of business, upon advertisements, etc. It is not open to dispute, that the defendant deals only in typewriters made by said concern, and that he actually obtains his goods from said concern.

> "The plaintiffs have tried to establish that the Remington-Sholes Typewriter Co. has unlawfully and surreptitiously appropriated the word Remington. They do not dispute that two descendants of the first typewriter manufacturer Remington, namely, Franklin and Carver Remington, were among the founders of the concern and are still interested in the same, but they claim that both these individuals named, entered into the concern only pro forma, to bestow upon it an apparent right to use their name so well-known in this line of business. However, whatever the plaintiffs have actually shown by way of foundation for their opposition to the use of the name Remington, it can in no way give rise to the conclusion, that in this instance a business name has been surreptitiously appropriated."

From this judgment the plaintiffs have asked for a revision, and move that the same be revoked as far as the appeal of the defendant is concerned, and that the judgment in the first instance be reinstated by rejecting such appeal.

The defendant has moved that the revision be refused.

## Opinion.

The revision can have no effect.

The judgment which is attacked gives two substantial reasons for its decision. The first set forth therein, that the danger of a confusion in business of the trademark employed by the defendant is not apparent, when compared with the plaintiff's trademark; the plaintiff is therefore not entitled under Sec's 12 and 20 of the act of May 12, 1894, to enjoin the defendant's use of his trademark.

This reason depends upon a finding of facts which may not be examined in the court of review, and is in itself alone sufficient to support the decision.

In this connection, as a reason for a revision of the judgment, the point is made, that the appellate court only considered, in its decision, the right to use a certain firm name, which right is governed by special principles, while

the review itself is only concerned with the protection of trademarks as regulated by the act of May 12, 1894. This presentation is, however, not well founded and is based upon an incorrect understanding of the opinion rendered. In the case at bar, of course, the trademark and the marking of the firm name are in the same category. But the opinion clearly shows, that the trademark as such, and in accordance with the declaration of the act of May 12, 1894, is made the subject-matter of the decision.

After so holding, it is not necessary to consider the second reason given by the appellate court for its decision, nor to consider, in this connection the reason given for a revision of the decision.

The burden of the costs of the court of revision is placed upon the review-plaintiff in accordance with Sec. 98 of the Civil Code.

(Signed) Dr. Binger, Wielandt, Dr. Petersen,
Rospatt, Fortsch, Remele,
Petry.

Rendered at the public session of the "zweiten Civilsenats des Reighsgerichts," (Supreme Court) upon Mar. 4, 1898.

Signed, Schrader,
Clerk of the Court.

Promulgated at Berlin, October 2, 1899,
(L. S.) Subscribed
Clerk of the Court of the
"Landgerichts I, 4, Kammer fur Handelssachen."

Be it known, that I certify to the literal agreement of the foregoing copy with the promulgation of the "Koniglichen Landgerichts I," Berlin of October 2, 1899.

Berlin, Oct. 6, 1899,
(L. S.) Rudolf Meissner,
Notary Public.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA, CITY OF BERLIN, KINGDOM OF PRUSSIA, GERMAN EMPIRE. } ss.

I, Frank H. Mason, Consul-General of the United States of America at Berlin, Germany, do certify that Rudolph Meissner whose signature is subscribed to the foregoing instrument, was, at the time of subscribing the same, Notary Public of the Royal Prussian Court of Justice at Berlin, Empire of Germany, duly commissioned and by law authorized to execute such acts, and that his signature and seal of office affixed thereto are genuine, and as such are entitled to full faith and credit.

WITNESS my signature and seal of office, at Berlin, this 3rd day of January in the year 1901.

FRANK H. MASON,
U. S. Consul-General.

(L. S.)

## EXHIBIT B.

### (Opinion of United States Circuit Court.)

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UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict
*vs.*
The Howe Scale Co., of 1886. } In Equity.

E. Remington & Sons a corporation of New York of 1865 made and sold fire-arms; it began to make and sell typewriters as a branch of its business in 1873, which became well and favorably known and were marked as Remington machines. The plaintiff, then a partnership now a corporation, of New York became the selling agent of these typewriters which were largely advertised and introduced by that name in this and foreign countries, and acquired and maintained a good reputation for style and workmanship. In 1886 the plaintiff bought out the typewriter business, including franchises and trade-marks and has continued and largely increased the manufacture and sale of the Remington machines by that name.

In 1893 Zalmon G. Sholes, got up a machine called the "Z. G. Sholes" typewriter, and a corporation of Illinois was organized to make and sell it, called the Z. G. Sholes Company. Carver Remington and Franklin Remington of Chicago acquired an interest in the corporation and business and the name of the machine was changed to "Remington-Sholes," and in 1894 the name of the corporation was changed to "Remington-Sholes Typewriter Company." This company has made, advertised and ex-

tensively sold those machines in this and foreign countries by the name "Remington-Sholes" in full, or "Rem-Sho," an abbreviation of it, and placed one or the other prominently upon the machines.

The defendant the Howe Scale Co. of 1886 is a corporation of Vermont, and has been and is a sales agent of these machines to a large extent for the Remington-Sholes Co. and so has prominently participated in this use of the name Remington, and this abbreviation of it in this business in this manner.

This suit is brought for that participation; the defendant justifies under the Remington-Sholes Co. and that company has assumed the defence of the suit and the validity of the defence depends upon the right of that company to so take and use the name "Remington" upon its machines.

Several questions in the case have been made by motion to suppress evidence and have been brought into the final hearing. They relate principally to testimony taken in rebuttal as not properly such; to testimony as to the use of the name in business correspondence and transactions not shown to have emanated from the defendants; and to testimony showing the use of the name upon, and in connection with the sale of typewriters in foreign countries.

Perhaps some of the testimony taken in rebuttal is not strictly such, but is rather cumulative; still it is such as would be admissible if taken at the proper time, or with leave, and as the motion has been brought along by consent to the hearing in chief, and the testimony might be the subject of a motion to retake, without intending to relax the rule as to order it is deemed best under the circumstances that this testimony be left to stand for what it is worth.

The evidence relates to machines emanating from the party under whom defendant has acted and justifies, with the name in question upon them, as placed there by that party, and evidence as to transactions in respect to such machines in connection with and relation to the plaintiff's machines and names, in trade although not proceeding directly from that party, or from the defendant, or authorized by either, appears to be admissible as a part of the *res gestae* for the purpose of showing the effect upon the plaintiff's trade of putting these other machines into the markets with the names in question upon them.

As this is a suit for interference in trade the boundaries of the dealing and not of governments or countries is material. There is said to be a difference between the laws of this country and those of some of the countries in question; but the laws of those countries would not govern or vary the rights of parties here in respect to transactions emanating from here, although carried out there. The motion to suppress is therefore overruled.

The intricate and delicate machinery of typewriters requires good materials and nice workmanship and their reputation depends largely upon the quality of their manufacture. The Remington Typewriter was among the pioneers, and one of the foremost in reputation for good construction. That the introduction to the markets of another machine with that name upon it, at the time when the Remington-Sholes machine appeared, would make confusion in the plaintiff's trade, and tend to pass off the new machines for the regular Remington machines of the plaintiff needs no proof but the circumstances; that it actually did have that effect well appears from the evidence. That was what the taking of the name was calculated to do, and what was to be expected. The ultimate purchasers would be led to think that the

addition of the name "Sholes" was a new style of the old machine coming from the same source.

Upon the well established principles that one has no right to push his wares as those of another, this would ordinarily be an actionable wrong at law, repetition of which to save multiplicity of suits for repeated wrongs would be restrainable in equity.

That these Remingtons are descendants of one of the original Remingtons, and Sholes a descendant of an inventor of some part of the original typewriters, is set up and relied upon as establishing a right to the use made of the names "Remington-Sholes" in this connection. No right descended however in these respects from any of these ancestors, to any of these persons; and this excuse has no legal foundation but is entirely sentimental. They were situated as to this as any other persons of the same names would have been, with no standing but their own natural rights to the use of their own names in the transaction of their business.

That all persons have respectively, the right to use their own names in their own business is entirely clear; but this right is subject to the limitation common to all rights that it is to be so used as not to injure the rights of others.

These Remingtons were not themselves manufacturers of typewriters, and did not start in as nor become such in their own names, nor have their own names put upon machines of their own make; but they gave their name to a large corporation as a distinct entity, which took the name into the typewriter business and put it upon the machines of that corporation whereby they undertook to confer the right to the use of that name upon that entity for the benefit of others, who had no right to use it at all. This was not a legitimate exercise of the natural

right to use their own name in their own business; but was an attempt to exercise a fictitious right to use the name in, to a great part, others' business. This was going far beyond their own rights, and was an undertaking to give what they did not have; and their own natural right to the use of their own name in their own business became thereby so mingled with the unlawful use of it for the benefit of others that it is indistinguishable here. They lost their identity in that of the corporations.

Connecting the name "Sholes" with Remington, in the business and on the machines would not or might not adequately indicate to a purchaser who had known or heard of the Remington typewriters, and wanted one, that these were not original Remingtons such as were wanted. The name although linked with Sholes, would indicate Remington connection in typewriter production and imply the original manufacture.

This use of the name "Remington," although done in such connection appears to be an unjustifiable invasion of the right to that name belonging to the plaintiff.

The long name Remington-Sholes, got shortened into Rem-Sho, in writing and speech in conducting the defendant's business which was well understood to be an abbreviation of the full name. The defendant has put the abbreviation upon the machines in place of the full name; and claims that this, at least, is so different from the name Remington as used by the plaintiff, and its predecessors that it can, and does, not to amount to any representation that the machines are Remington machines. If this short name had been the one first used there would be much plausibility in this argument; but following Remington-Sholes as it has in use it has become a well known short representation of what the long name it

stands for represented, and of itself now amounts to a wrongful representation of the source of the defendant's machines.

According to these views the plaintiff appears to be entitled to a decree suppressing the use of the name Remington in the compound name of "Remington-Sholes," and the use of the compound abbreviation of that name upon the defendant's typewriting machines or in the sale thereof.

Decree for plaintiff.

HOYT H. WHEELER.

WILDER L. BURNAP,
H. D. DONNELLY,
CHARLES E. MITCHELL,
for plaintiff.
BUTLER & MOLONEY,
JAMES H. PEIRCE,
GEORGE P. FISHER, JR.,
for defendant.

## EXHIBIT C.

### (Decree of United States Circuit Court.)

At an Equity Term of the Circuit Court of the United States in and for the District of Vermont, held at Windsor, in said District on the 3rd Tuesday of May and on the 14th day of August, a day in said term 1901.

Present: Hon. HOYT H. WHEELER, Judge.

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

Wyckoff, Seamans & Benedict,
*vs.*
The Howe Scale Company of 1886. } In Equity.

This cause coming on to be heard upon the pleadings and proof and after hearing Messrs. Henry D. Donnelly and Charles E. Mitchell, counsel for the complainant, and James H. Peirce and George P. Fisher, Jr., counsel for the defendant, and due deliberation having been had thereon, it is ordered, adjudged and decreed, and the court doth hereby order, adjudge and decree as follows, namely:

1. That since about the year 1873 the complainant and its predecessors have been engaged in the manufacture and sale of Typewriting Machines which became well and favorably known, and were marked and designated as "Remington" machines.

2. That said writing machines were put upon the market by complainant and its predecessors and introduced advertised for sale and popularized in this country

and in foreign countries under the name of "Remington" and "Remington Typewriter," by which names they came to be widely known and identified by purchasers and the public, and which before the acts of the defendant and its principal "Remington-Sholes Company" in the bill of complaint mentioned had for many years been continuously and exclusively used to designate and identify complainant's machines.

3. That prior to the acts complained of the complainant acquired and succeeded to the typewriter business founded by E. Remington & Sons, including franchises, trade-marks and the good will thereof, and said business of manufacturing and selling typewriting machines was continued and largely increased and an important good will was created and existed which was a source of great profits to complainants.

4. That the defendant, Howe Scale Company of 1886, a corporation existing under the laws of the State of Vermont, has made use, in connection with the sale of typewriting machines manufactured by the Remington-Sholes Company a corporation existing under the laws of the State of Illinois of the name and designation "Remington-Sholes" and "Rem-Sho," and has sold and caused the typewriting machines of said "Remington-Sholes Company," to be advertised for sale and to be offered for sale and sold and delivered, by word of mouth and otherwise, under the name of "Remington-Sholes" typewriters and "Rem-Sho" typewriters.

5. That the sale by the defendant, "Howe Scale Company of 1886," of typewriting machines manufactured by or for the said "Remington-Sholes Company" under the name of or as "Remington-Sholes" typewriters or "Rem-Sho" typewriters, constitutes a fraudulent infringement and invasion of the rights of the complainant

and an unfair and inequitable competition which equity will restrain.

6. That at the time this action was commenced the defendant, "Howe Scale Company of 1886" was the general sales agent of the "Remington-Sholes Company" for the United States and that said last named company assumed the defence of this action, agreed to pay and has paid all expenses incident to the defence thereof, and agreed to protect and save harmless said defendant with respect thereto.

7. And it not appearing that the defendant as such agent has received any profits, gains and advantages which have arisen or accrued to it from the infringement of the said trade-name and designation "Remington" by using or selling typewriting machines having thereon the name "Remington" or the abbreviation "Rem" as the name or part of the name of said writing machines, and an account thereof is denied without prejudice to any right of the complainant to recover the same of the principal the Remington-Sholes Company.

8. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein perpetually enjoining the defendant, "Howe Scale Company of 1886" its officers, clerks, attorneys, agents, servants and workmen and all persons acting in privity with it or them or claiming through or under it or them from in any manner whatsoever making use of the designation "Remington" or "Rem" as the name or part of the name of any typewriting machine whatsoever manufactured by said Remington-Sholes Company, or by defendant or any person or concern and from selling, offering exposing or advertising for sale by means of signs, show cards, catalogues, circulars, publications, advertisements or by word

of mouth, or in any manner whatsoever, typewriting machines manufactured by said "Remington-Sholes Company" or by defendant or any person or concern, under the name of or as "Remington-Sholes" or "Rem-Sho" or by any designation of which the word "Remington" or the abbreviation "Rem" shall constitute a part.

9. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein perpetually enjoining the said defendant, Howe Scale Company of 1886, its officers, clerks, attorneys, agents, servants and workmen, and all persons acting in privity with it or them or claiming through or under it or them from in any manner whatsoever making use of the word "Remington" or the abbreviation "Rem" as the whole or as a part of any name or designation whatsoever, which shall be marked upon, or affixed or applied, by any means to typewriting machines manufactured or sold by the said "Remington-Sholes Company" or by defendant or any person or concern and used by it or them in connection with the manufacture and sale of its or their writing machines and to distinguish and identify the same.

10. And it is further ordered, adjudged and decreed that the said complainant do recover of the defendant its costs, charges, and disbursements in this suit to be taxed by the Clerk of this Court, and that in default of the payment of the same the complainant have execution therefor.

HOYT H. WHEELER, Judge.

Clerk's Office, U. S. Circuit Court.
District of Vermont.
BURLINGTON, November 4, 1901.

I hereby certify that the above and foregoing is a true

copy of the original decree in case of *Wyckoff, Seamans & Benedict* v. *Howe Scale Co. of 1886*, now remaining on file in my office.

GEORGE E. JOHNSON,
Clerk.

[SEAL.]

## EXHIBIT D.

### (Opinions Rendered by United States Circuit Court of Appeals.)

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Before WALLACE, LACOMBE AND COXE, Circuit Judges.

Wyckoff, Seamans & Benedict,
*Complainant-Appellee,*
*vs.*
The Howe Scale Company of 1886,
*Defendant-Appellant.*

This cause comes here upon appeal from a decree of the Circuit Court, District of Vermont granting an injunction against the use of the name Remington or its abbreviation "Rem" upon defendant's typewriting machines, or in the sale thereof. The nominal defendant is a sales agent only, the real defendant, which has assumed the defence of the suit, is the Remington-Sholes Company of Chicago, Illinois, and it will be understood that whenever the word "defendant" is used in this opinion it refers to the last-named corporation only.

LACOMBE, Circuit Judge.

The complainant is the successor of so much of the business of the corporation E. Remington & Sons, (which succeeded the old firm of the same name) of

Ilion, N. Y., as is concerned with the manufacture and sale of typewriters, including good-will, trade marks, etc. The old firm was organized into a corporation in 1865 and in 1873 it began the manufacture of typewriting machines. It is not disputed here that the firm and the corporation acquired a high and well deserved reputation for careful workmanship in every branch of manufacture which it undertook; nor is it disputed that the typewriting machines which the corporation and its successor have continuously manufactured at Ilion are most favorably known to the public and are associated in the public mind with the name Remington, so that the ordinary purchaser is quite likely to assume that a machine offered to him for sale as a "Remington" has come from the establishment founded by the Remingtons at Ilion nearly half-a-century ago. To this manufacture and trade the complainant succeeded in 1886; it thereupon became entitled to conduct the business of manufacturing machines and selling them as Remington machines, and would have the right to invoke the aid of a court of equity to restrain another trader from any action which would be calculated unnecessarily to confuse the goods of his own make with those of complainant.

The defendant is the Remington-Sholes Company, it marks its machines "Remington-Sholes" and "Rem-Sho" and there can be no doubt upon the record that the use of the name "Remington" helps the sale of machines and induces many purchasers to suppose that such machines are the product of the old establishment at Ilion. Defendant, however, insists that it has the right to use that name, because of its relations with two gentlemen of the name of Remington, that it has done nothing else to produce confusion and that, therefore, whatever confusion results is *damnum absque injuria*. We do not find in this voluminous

record sufficient evidence that defendant has itself done anything to promote confusion in the minds of the public, except to use the name Remington on its machines and in its literature. It may very well be that it understood quite clearly that by thus using the name defendant gave to all middlemen and dealers, outside of its own agents, opportunity and perhaps a suggestion to misrepresent the parentage of the machines, but, if it had the right to use the same, it cannot be held responsible for the consequences of such use. On the other hand if it had no right so to use the name it cannot avoid responsibility merely because its agents were careful to explain when selling to the trade that the Remington-Sholes machines were not the product of the original Remington establishment or of its successor. In such a case the question is "whether the defendants have or have not knowingly put into the hands of the retail dealers the means of deceiving the ultimate purchasers." *N. K. Fairbank Co.* v. *Bell*, 77 F. R. 869.

The question here is whether the name "Remington-Sholes" which is defendant's designation, and which therefore impregnates all the literature it circulates with the name which complainant's predecessors made a household word, was fairly bestowed upon it; and whether the same name was fairly placed on the machines.

The history of defendant's machines is as follows. In 1892 Zalmon G. Sholes (whose father had been an inventor of typewriters) invented a machine, constructed a working model of it and subsequently a second model, the first having been destroyed by fire. He called this "The Z. G. Sholes" typewriter and endeavored unsuccessfully to get sufficient capital to manufacture it for

sale. In 1893 he became acquainted with Franklin Remington and Carver Remington who were sons of Samuel Remington at one time president of the original corporation at Ilion. These junior Remingtons had not been themselves engaged in the manufacture of typewriting machines and at the time they met Sholes were engaged in some contracting work in Chicago, in connection with the drainage canal. In August 1893 they entered into an agreement with Sholes becoming jointly interested with him in the enterprise, and endeavored to interest capitalists, their own means being insufficient. In November 1893 the name of the machine was changed from "The Z. G. Sholes" to "Remington-Sholes," that is to say the name on the model was changed and the parties interested began to talk of the machine as the "Remington-Sholes," but no such machines had apparently been manufactured and offered for sale. In the spring of 1894, Mr. Head and Mr. Fay, two large capitalists became interested, and in May of that year a corporation was organized to manufacture and sell the machines. Of this corporation Franklin and Carver Remington were stockholders. Fay was the chief promoter, and received one-third of the capital stock as compensation for his services in organizing it. The name selected by its promoters for the corporation was "Remington-Sholes Typewriter Company." The new company leased a factory, bought tools and by December 1894 its first typewriting machine was placed upon the market. It was labelled "Remington-Sholes." This company continued to make and sell machines under that designation until it became financially embarrassed. Thereupon its stockholders, Remington, Fay, Head and others organized a new company, the present defendant "Remington-Sholes Co." to whom the entire assets of the old company was trans-

ferred through Fay, who held them and conducted the business for a brief interval. The new company devised the name "Rem-Sho" as a trade-mark of its machine, and marks upon the cross-bar of each machine the words "Remington-Sholes Company, Mfrs. Chicago." Manifestly the situation of the new company relatively to any issues raised here is substantially the same as that of the old company.

The principles of law governing cases of this kind are simple and easily stated; the only difficulty is their application. The Supreme Court in *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169 held that "Every one has the absolute right to use his own name honestly in his own business, even though he may incidentally interfere with and injure the business of another having the same name. In such case the inconvenience or loss to which those having a common right are subjected is *damnum absque injuria*. But, although he may thus use his name, he cannot resort to any artifice or to any act calculated to mislead the public as to the identity of the business firm or establishment, or of the article produced by them, and thus produce injury to the other beyond that which results from the similarity of name. Where the name is one which has previously thereto come to indicate the source of manufacture of particular devices, the use of such name by another, unaccompanied with any precaution or indication, in itself amounts to an artifice calculated to produce the deception." No one may be excluded from taking up whatever business he chooses by the circumstance that some one else of the same name has made a reputation in it; nor may he be required to conduct such business under an alias although the conducting of it under his own name may produce a confusion in the public mind as to the identity of goods,

which no "precaution or indication" of his can effectually prevent. It is through no fault of his that his name happens to be the same as that of some other man who has already impressed his personality on some particular industry. All that is required of him is that he shall use reasonable precautions to prevent confusion, that he shall refrain from any affirmative act which may produce it; thus doing and thus refraining he may do business under the name that came to him without his choice and may call his goods by it, if he pleases. This may cause much injury to some one else, and some injury to the public, but no other rule could be adopted without injustice to the innocent individual, who is not responsible for the selection of his name. Unless the individual is to be debarred from one particular business altogether, or compelled to give up the name he inherited, the use of that name by two persons selling the same articles is a necessary evil to which the public must submit.

In the case of a corporation, however, the situation is different. The choice of its name is voluntary; such name is an artificial thing which can be selected by its incorporators from the entire vocabulary of names. In *R. W. Rogers Co.* v. *Wm. Rogers Man. Co.* 70 F. R. 1019 this court enunciated the proposition that "a body of associates who organize a corporation for manufacturing and selling a particular product are not lawfully entitled to employ as their corporate name in that business the name of one of their number when it appears that such name has been intentionally selected in order to compete with an established concern of the same name, engaged in similar business, and divert the latter's trade to themselves by confusing the identity of the products of both, and leading purchasers to buy those of one for

those of the other. . . . The corporators chose the name unnecessarily, and, having done so for the purpose of unfair competition, cannot be permitted to use it to the injury of the complainant." Other courts have laid down substantially the same doctrine *Higgins Co.* v. *Higgins Soap Co.* 144 N. Y. 462, *DeLong* v. *DeLong Co.* 89 Hun. 399, *Garrett* v. *T. H. Garrett & Co.* 78 F. R. 472, *LePage Co.* v. *Russia Cement Co.* 51 F. R. 941, *Clark Thread Co.* v. *Armitage* 67 F. R. 896, *Valentine Meat Juice Co.* v. *Valentine Extract Co.* 17 Patent & Trade Mark Cases 673. Moreover the incorporator who elects to transfer his own name for business purposes to an artificial person other than himself is taking an affirmative step in the direction of promoting unnecessary confusion, instead of taking precautions to prevent it.

The corporation defendant and its predecessor the typewriter company acquired their names by the selection of the individuals who organized them. Obviously there was no necessity that either of them should take the name "Remington" either alone or in combination. The junior Remingtons contributed money to the enterprise and gave, at least one of them did, time and services to its promotion, but they were very far from being the entire corporation; the corporation was a separate entity from them; they chose not to prosecute the typewriter business themselves; had they done so good faith toward those dealing with them might make it necessary to use their own name; they chose on the contrary to associate themselves with others in a corporation whose name its organizers were free to select. Some suggestion has been made that the machines existed before the incorporation; that they were produced by the Remingtons and Sholes individually at a time when the Remingtons had gone into the typewriting business with Sholes on their own

account and had a right to sell their goods under their own name. The record is very volunminous and we may have overlooked some item of proof, but a careful examination of it does not sustain this proposition. Prior to the formation of the Remington-Sholes Typewriter Company no machines had been sold or offered for sale. Two or more had been made as models and the name on them changed from "Z. G. Sholes" to "Remington-Sholes," but the new name had not become associated with the machine except in the talk of the future corporators among themselves; the public knew nothing of any such name in connection with a typewriter, indeed did not know the junior Remingtons or even Sholes as a producer of typewriters. No necessity, business or otherwise, required the selection of the name "Remington-Sholes" for the corporation. And when it was formed and began for the first time to make and sell machines, it was free to select any name it pleased to designate them. It chose its own name, but its choice was not like the choice of an individual who has inherited a name and applies it to his goods. If the name of the corporation was adopted unnecessarily and with the expectation that it would produce a confusion through which some trade intended for another might be diverted to itself, it would have no right to offer its goods under that name.

We have no doubt whatever that the name Remington was chosen because it was expected that it would naturally lead the public to suppose that the new corporation was either the successor or some branch of the old concern, of which appellant's brief observes: "the name Remington was admittedly a by-word for good workmanship the world over." There are some propositions that do not require direct affirmative testimony, and we do not gain much enlightenment from the long examina-

tion of Mr. Sholes as to what were his mental processes when he invented the combination "Remington-Sholes." Counsel for the appellee frankly conceded on the argument that the choice was an "intelligent" one. That is quite sufficient. We have no doubt it was an intelligent choice; those who selected it well-knew that the use of the name Remington in connection with a typewriting machine would help to sell it, as the name of Brown or Peterson would not. They knew too that it would be thus helpful because it suggested to the purchaser that it had been made by the Remington concern, whose name was a "by-word for good workmanship the world over." They knew that the presence of that name on the machine would be a constant temptation, often yielded to by whomever sold one to the uninstructed purchaser, to represent that it was the "real" or the "improved" Remington; that the presence of the name made confusion easy; and that the results of any confusion would be entirely in their favor. It was because of that knowledge that the Remington's associates, Sholes the sole inventor of the machine, and Fay the capitalist whose contributions enabled the new concern to manufacture on a scale large enough to bring it into the field as a competitor, selected the Remingtons' name, not because they were willing to pay some graceful compliment to Franklin Remington for the energy and enthusiasm with which he entered upon his new sphere of activity, or to himself and his brother for the $15,000. they invested in the enterprise.

Under the authorities in this circuit the complainant is entitled to the injunction granted him as to the use of the name "Remington." The arbitrary name "Rem-Sho," however, does not seem to us to be sufficiently like "Remington" to be by itself a reasonable cause of confusion. The decree, therefore, is reversed without costs and cause

remanded with instructions to decree in favor of complainant only as to the name "Remington."

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Wyckoff, Seamans & Benedict,
*Complainant-Appellee,*
*vs.*
The Howe Scale Company,
*Defendant-Appellant.*

COXE, J.

I concur in the conclusion reached by Judge Lacombe for the reason that I am unable to distinguish this cause from *Rogers* v. *Rogers*, 70 Fed. Rep. 1017.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Wyckoff, Seamans & Benedict,
*Appellee,*
*vs.*
The Howe Scale Company,
*Appellant.*

WALLACE, LACOMBE AND COXE, Circuit Judges.

WALLACE, Circuit Judge, dissenting:—

The only right to use the word "Remington" which the complainant ever acquired from a person of that name was to employ it as a part of the name "Standard Remington Typewriter" in connection with the manufacture and sale of typewriters of the two forms which previous to March, 1886, had been manufactured by E. Rem-

ington & Sons. In April, 1888, the complainant registered a trademark in the patent office consisting of a symbol resembling a seal, red in color, and having in white letters the words "Standard Remington Typewriter". It has also been accustomed to mark its machines with the words "Remington Standard Typewriter".

The defendant (I refer to the party who has assumed the defense of the suit.) has been deprived of using its name, "Remington-Sholes Company", upon its own typewriters, machines which vary in appearance so much from those sold by the complainant that a mistake in identity is impossible except by persons who suppose that "Remington Standard Typewriter", or "Standard Remington Typewriter", and "Remington-Sholes Company", are the same. Doubtless some careless purchasers have been misled, and some unscrupulous dealers have traded on the resemblance imparted by the word Remington; but the defendant is not legally or morally responsible for the deception practiced by others. From the inception of its use of the word it has scrupulously sought to avoid any confusion of identity, and wishing to sell its machines upon their own merits has industriously pointed out that it had no connection with the Standard Remington Typewriter in its advertisements, circulars, and letters of instruction to sales agents.

If the defendant had selected its name for the purpose of unfair competition in trade with the complainant, the question whether the collocation of the word Remington with the other words did not suffice to distinguish its name from the complainant's name would be of little importance, but there is no evidence that it did this except the implication created by its selection of the word "Remington;" and if it selected the word from a legiti-

mate motive any such implication is repelled. The facts attending the selection of its name by the defendant in my opinion show quite conclusively that it did so legitimately.

The defendant is the successor in business of a corporation of practically the same name (The Remington-Sholes Typewriter Company), which was the successor in business of a concern of which the two Remingtons and Sholes were the owners. I agree with the opinion of the court below in the statement that the situation of the new company relatively to any issues raised here is substantially the same as that of the old company, and the inquiry therefore is whether The Remington-Sholes Typewriter Company, in adopting its corporate name, did so legitimately. In 1893 the two Remingtons, sons of the former president of E. Remington & Sons, became interested with Sholes in exploiting a typewriter which the latter had invented, patented, built, and marked with his name as the "Z. G. Sholes Typewriter," the two Remingtons buying a three-fourths interest for about $9,000. Shortly afterwards the name of the machine was changed and it was marked the "Remington-Sholes Typewriter." Between that time and the spring of 1894 the Remingtons had expended besides their original purchase money some six or seven thousand dollars for salaries, shop rent, and other expenses in exploiting the machine, Franklin Remington devoting himself exclusively to the enterprise. In the spring of 1894, in order to interest others and procure thereby the capital required for manufacturing the machine upon a commercial scale and establishing business agencies, the Remingtons and Sholes concluded to organize a corporation. Accordingly they organized the Remington-Sholes Typewriter Company, the Remingtons and Sholes owning two-thirds of the

stock of that corporation and one-third being given to the new associates. The new company at once purchased the necessary tools and machinery, and commenced manufacturing the machines and placing them on the market, and until the summer or fall of 1895 its business was managed entirely by Franklin Remington and Sholes. Undoubtedly in selecting the corporate name they understood that it might suggest some association with the great concern at Ilion, and to that extent that the word Remington was valuable; but that concern was not engaged in the manufacture of typewriters. It was natural that those who had invented the machine, and given all their time and means in introducing it to the public, when they came to organize the corporation which was to represent the culmination of their hopes and efforts, should choose their own name as the corporate name. In doing so I think they were exercising only the common privilege that every man has to use his own name in his own business, provided it is not chosen as a cover for unfair competition. They did not choose the complainant's name literally, or so closely that those using ordinary discrimination would confuse the identity of the two names, and the differentiation is sufficient to relieve them of any imputation of fraud.

I think the decision should be reversed with instructions to dismiss the bill.

## EXHIBIT E.

### (Order for Mandate.)

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 20th day of April one thousand nine hundred and three.

Present: Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. ALFRED C. COXE,
Circuit Judges.

Wyckoff, Seamans & Benedict,
*Complainant-Appellee,*
*vs.*
Howe Scale Company of 1886,
*Defendant-Appellant.*

Appeal from the Circuit Court of the United States for the District of Vermont.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the District of Vermont, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said Circuit Court be and it hereby is reversed without costs, and cause remanded with instructions to decree in favor of complainant only as to the name "Remington."

It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

## EXHIBIT F.

### (Final Decree of Circuit Court, June 23, 1903.)

At an Equity Term of the Circuit Court of the United States in and for the District of Vermont, held at Windsor, in said District, on the 3d Tuesday of May, A. D. 1903.

Present: Hon. HOYT H. WHEELER, Judge.

UNITED STATES CIRCUIT COURT, DISTRICT OF VERMONT.

| | |
|---|---|
| Wyckoff, Seamans & Benedict, *Complainant*, *vs.* The Howe Scale Company of 1886, *Defendant*. | In Equity. |

It appearing that a decree was heretofore entered in the above entitled cause in favor of the complainant, Wyckoff, Seamans & Benedict, against the defendant, Howe Scale Company of 1886, which, among other things, enjoined the defendant, its officers, agents, etc., from in any manner whatsoever making use of the designation "Remington" or "Rem," as the name or part of the name of any typewriting machine whatsoever, manufactured by the Remington-Sholes Company, and from offering for sale, selling, exposing or advertising for sale, in any manner whatsoever, typewriting machines manufactured by said Remington-Sholes Company, under the name of or as "Remington-Sholes," or "Rem-Sho," or of any designation of which the word "Remington" or the abbreviation "Rem" constituted a part; and it appearing that the said cause was thereafter

appealed to the United States Circiut Court of Appeals in and for the said Circuit Court, and it also appearing that the said decree of the said United States Circuit Court was thereafter reversed without costs and said cause was remanded, with instructions to decree in favor of complainant only as to the name "Remington;"

Now, after hearing Henry D. Donnelly, counsel for complainant, and George P. Fisher, Jr., and F. M. Butler, Esq., counsel for defendant, on consideration whereof upon the mandate herein, it is now ordered, adjudged and decreed and this court doeth hereby order, adjudge and decree as follows, namely:

1. That since about the year 1873 the complainant and its predecessors have been engaged in the manufacture and sale of typewriting machines which became well and favorably known and were marked and designated as "Remington" machines.

2. That said writing machines were put upon the market by complainant and its predecessors and introduced, advertised for sale and popularized in this country and in foreign countries under the name "Remington" and "Remington Typewriter," by which names they came to be widely known and identified by purchasers and the public, and which, before the acts of the defendant and its principal "Remington-Sholes Co.," in the bill of complaint mentioned, had for many years been continuously and exclusively used to designate and identify complainant's machines.

3. That, prior to the act complained of, the complainant acquired and succeeded to the typewriter business founded by E. Remington & Sons, including franchises, trade-marks and good-will thereof, and said business of manufacturing and selling typewriting machines was continued and largely increased and an important good-will

was created and existed which was a source of great profits to complainant.

4. That the defendant, Howe Scale Company of 1886, a corporation existing under the laws of the State of Vermont, has made use, in connection with the sale of typewriting machines manufactured by the Remington-Sholes Company, a corporation existing under the laws of the State of Illinois, of the name and designation "Remington-Sholes" and "Rem-Sho," and has sold and caused the typewriting machines of said "Remington-Sholes" Company to be advertised for sale and to be offered for sale and sold and delivered, by word of mouth and otherwise, under the name of "Remington-Sholes" typewriters and "Rem-Sho" typewriters.

5. That the sale by the defendant, "Howe Scale Co. of 1886," of typewriting machines manufactured by or for the said Remington-Sholes Company under the name of or as "Remington-Sholes" typewriters, constitutes a fraudulent infringement and invasion of the rights of the complainant and an unfair and inequitable competition which equity will restrain.

6. That at the time this action was commenced the defendant, "Howe Scale Company of 1886," was the general agent of the "Remington-Sholes Co." for the United States and that said last named company assumed the defence of this action, agreed to pay and has paid all expenses incident to the defense thereof and agreed to protect and save harmless said defendant with respect thereto.

7. And it not appearing that defendant, as such agent, has received any profits, gains and advantages which have arisen or accrued to it from the infringement of the said trade-name and designation "Remington" by using or selling typewriting machines, having thereon the name

"Remington" as the name or part of the name of said writing machines, an account thereof is denied without prejudice to any right of the complainant to recover the same of the principal, the Remington-Sholes Company.

8. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein perpetually enjoining the defendant, "Howe Scale Co. of 1886," its officers, clerks, attorneys, agents, servants and workmen and all persons acting in privity with it or them, or claiming through or under it or them from in any manner whatsoever making use of the designation "Remington" as the name or part of the name of any typewriting machine whatsoever manufactured by the Remington-Sholes Company, or by defendant or any person or concern, and from selling, offering, exposing or advertising for sale by means of signs, show-cards, catalogues, circulars, publications, advertisements or by word of mouth, or in any manner whatsoever, typewriting machines manufactured by said Remington-Sholes Company or by defendant, or any person or concern under the name of or as "Remington-Sholes," or by any designation of which the word Remington shall constitute a part.

9. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein perpetually enjoining the said defendant, "Howe Scale Co. of 1886," its officers, clerks, attorneys, agents, servants and workmen, and all persons acting in privity with it or them, or claiming through or under it or them, from in any manner whatsoever making use of the word "Remington" as the whole or as the part of any name or designation whatsoever, which shall be marked upon, or affixed or applied by any means to typewriting machines, manufactured or sold by the said "Remington-Sholes" company, or by defendant, or any person or concern, and used

by it or them in connection with the manufacture and sale of its or their writing machines and to distinguish and identify the same.

10. And it is further ordered, adjudged and decreed that the said complainant do recover of the defendant its costs, charges and disbursements in this suit in this court, to be taxed by the clerk thereof, and that in default of the payment of the same the complainant have execution therefor.

Done in court this 23d day of June, A. D. 1903, a day in said term.

HOYT H. WHEELER,
Judge.

Office Supreme Court U. S.
FILED
OCT 22 1903
JAMES H. McKENNEY,
Clerk.

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

HOWE SCALE COMPANY OF 1905 AND
FAY-SHOLES COMPANY,
Petitioners.

vs.

WICKOFF, SEAMANS & BENEDICT,
Respondents.

No. 445

## BRIEF FOR PETITIONERS ON APPLICATION FOR WRIT OF CERTIORARI.

AUSTEN G. FOX,
JAMES H. PEIRCE,
GEORGE P. FISHER, JR.,
WM. KINSEY BENEDICT,
Attorneys and of Counsel for Petitioners.

Rumsey Bros., Law Printers, 346 Dearborn St., Chicago.

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,
Petitioners,

vs.

WYCKOFF, SEAMANS & BENEDICT,
Respondent.

## BRIEF FOR PETITIONERS.

This is a petition for a writ of *certiorari* requiring the Circuit Court of Appeals for the Second Circuit to certify to this court for its review and determination the case of *Wyckoff, Seamans & Benedict, Complainant-Appellee* v. *Howe Scale Company of 1886, Defendant-Appellant.*

The said suit was brought in the United States Circuit Court for the District of Vermont for alleged infringement of complainant's registered trade-marks "Remington" and "Remington Standard," and for alleged unfair competition in trade.

The Howe Scale Company of 1886 at the time of the bringing of said suit was placing upon the market typewriting machines manufactured by the Remington-Sholes Company of Chicago, Illinois, and bearing the name

"Rem-Sho" and the name and address of the manufacturer, viz., "Remington-Sholes Company, Mfrs. Chicago," and it was against this use of the names "Rem-Sho" and "Remington-Sholes" that the complaint was particularly directed. The Circuit Court sustained the bill of complaint so far as granting the prayer for an injunction, but denied the prayer for an accounting. On appeal, the Circuit Court of Appeals, by a divided court, technically reversed the decision and remanded the cause to the lower court with instructions to decree in favor of Complainant only as to the name "Remington." From this decision of the Circuit Court of Appeals, WALLACE, J., dissented, holding that the decree of the lower court should be reversed with instructions to dismiss the bill of complaint. After the issuance of the mandate of said Circuit Court of Appeals, the Circuit Court on June 23rd, A. D. 1903, entered a final decree in which it was decreed *inter alia* that your petitioner, the Howe Scale Company of 1886, and all others acting in privity with it, should be enjoined from in any manner whatsoever making use of the word "Remington" as the whole or as a part of any name or designation whatsoever which should be marked upon or applied to typewriting machines, and that the respondent, Wyckoff, Seamans & Benedict, recover the costs of suit.

## Facts.

In the year 1873 E. Remington & Sons, a corporation then engaged in business at Ilion, New York, began the manufacture of a typewriting machine, the most important features of which were invented and patented by one Christopher Latham Sholes (R. 208). At that time, as complainant's witnesses testified, "the name Reming-

ton was known the world over owing to their building guns for foreign governments, building sewing machines and having one of the largest manufacturing works in the world "(R. 206). The typewriting machine manufactured by E. Remington & Sons soon became widely known, as the bill of complaint asserts, by the names "Remington" and "Remington Standard."

On March 22, 1886, the typewriter branch of the Remington corporation was sold to Wyckoff, Seamans & Benedict, and, at the time of such sale, the Remington corporation reserved to itself the right to re-engage in the manufacture and sale of typewriting machines at any time after ten years from the date of such sale.

The fire-arms branch of the Remington corporation was later transferred to the Remington Arms Company that continues to manufacture the "Remington Rifle," the "Remington Shot Gun," the "Remington Bicycle," etc.

**Identifying Marks of Complainant's Machine.**—For many years past complainant's typewriting machines have been marked conspicuously and invariably with the name "REMINGTON," with the large "RED SEAL" trade-mark upon the paper table and frame, with the name and address "REMINGTON STANDARD TYPEWRITER MANUFACTURED BY WYCKOFF, SEAMANS & BENEDICT, ILION, N. Y., U. S. A." on the cross-bar in front of the keyboard and with the words and figures "No. 6 REMINGTON STANDARD TYPEWRITER No. 6" on the front of the base, and with the words "This machine is protected by 67 American and foreign patents" on the back. (R. 103; 104.)

**Genesis of the Remington-Sholes Company.** —In 1892 Zalmon G. Sholes, a son of Christopher Latham Sholes (the pioneer typewriter inventor) invented a typewriting machine, but, being without capital, he sought to interest others in its manufacture. In the early part of 1893, The Z. G. Sholes Company was organized under the laws of Wisconsin for this purpose by persons strangers to this litigation and to those connected therewith. (R. 398.) THE STOCK OF SUCH COMPANY WAS NEVER ISSUED, AND NO MACHINE WAS EVER MADE, OR SOLD BY IT. (R. 399.*) After various failures to secure capital, Mr. Sholes, in the summer of 1893, met Franklin and Carver Remington (R. 403), sons of Samuel Remington, formerly president of the E. Remington & Sons corporation, and interested them in his new machine. They bought a three-fourths interest in Sholes' inventions from parties to whom he had previously sold, and in order to extinguish the exclusive license to practice said inventions theretofore vested in the Z. G. Sholes Company they bought a like interest in the stock of said company, making a written agreement with Sholes (R. 826) that *"no other, further or different business of any kind or nature shall be transacted by said corporation or in its behalf except that the same shall be dissolved,"* etc. Upon acquiring their interest in the Sholes machine, the Remingtons and Sholes endeavored to procure the capital necessary for its manufacture. (R. 403 and 404.)

At the outset both of the Remingtons gave equal at-

*This court will therefore perceive the error of fact in the opinion of Wheeler, J., in stating that the Z. G. Sholes Company was an Illinois corporation, that the name of such corporation was changed to Remington-Sholes Typewriter Company and the somewhat similar error appearing in the opinion of the Circuit Court of Appeals.

tention to the matter, but after the first month Franklin Remington gave his entire time to the promotion of the enterprise (R. 428), and no steps were thereafter taken by Sholes in connection with the machine without consulting with Franklin Remington. (R. 429.) It was Franklin Remington who supplied the money for salaries, for attorneys' fees, for shop rent, for changes in the machine, etc., to the extent of some six or seven thousand dollars beyond his original investment of eight or nine thousand. (R. 413, 430.) After they had labored together for many months, Sholes, without the knowledge of the Remingtons, changed the name of the reconstructed machine from "The Z. G. Sholes" to "The Remington-Sholes." (R. 427.)

As the successful manufacture and sale of their typewriting machine required capital far beyond their slender means, the Remingtons and Sholes sought at various points to enlist others in the enterprise. After repeated failures they at length induced Mr. Charles N. Fay and Mr. Franklin H. Head of Chicago to furnish the requisite funds to manufacture this new-born Remington-Sholes machine. Of the many typewriting machines upon the market nearly every one bears the name of the inventor or manufacturer, and is the output of a corporation similarly named. In keeping with this custom the name "Remington-Sholes" was retained for the machine, and the corporation organized in the spring of 1894 for its manufacture was designated the "Remington-Sholes Typewriter Company."

The capital stock of this company (which was afterwards increased) consisted at first of 1,500 shares of the par value of $100 each, and these shares were subscribed for as follows, viz.: Z. G. Sholes, 374 shares; F. Remington, 561 shares; C. Remington, 562 shares, and Nor-

man Hapgood, C. H. Hamill and L. Thompson, one share each. Upon the completion of its organization, the following officers were chosen, viz.: Mr. C. N. Fay, president; Mr. Franklin Head, vice-president; Mr. Franklin Remington, general manager; Mr. Z. G. Sholes, superintendent (R. 434), and Franklin Remington, Carver Remington, Z. G. Sholes and Messrs. Fay and Head, directors. (R. 409.) The company at once purchased the necessary tools and machinery, and its first typewriting machines were placed upon the market in December, 1894. *During the first year of the existence of this company its business was managed entirely by Franklin Remington and Z. G. Sholes* (R. 434; 429), Mr. Fay being absent most of the time in Europe and elsewhere.

In preparing the machine for the market, modifications and changes were made by Sholes, and these were invariably talked over with Remington and were subject to his approval. (R. 434.) From December, 1894, until it ceased doing business in the fall of 1896, the Remington-Sholes Typewriter Company widely advertised its machines as the "Remington-Sholes Typewriter" (R. 437), and established agencies throughout different parts of this country. During the first year it sold about 1,000 machines (R. 438), and up to December, 1896, about 3,000 or 3,500. (R. 438.)

In the fall of 1896 the Remington-Sholes Typewriter Company had run so in debt that it became necessary to take steps to meet its obligations, and on December 14, 1896, a meeting of the stockholders was held for such purpose. At this meeting 2,356 shares of stock were represented, Mr. Sholes, Mr. F. Remington, Mr. Fay and Mr. Head, with other stockholders, being present and voting. Resolutions were then passed, instructing the

secretary to sell at public auction the property and assets of the company, the buyer to have the privilege of using all or any part of the company's corporate name. (R. 839.) On December 19, 1896, in pursuance of such stockholders' resolutions, C. N. Fay purchased in his own name (but as trustee for himself and other stockholders) the whole of the assets of said company, together with its good-will, the exclusive right to use its trade-marks, trade-name, etc., and for several months thereafter (R. 410), and until a reorganization could be effected, carried on the business at the factory formerly occupied by said Remington-Sholes Typewriter Company. (R. 354.)

The charter of the Remington-Sholes Typewriter Company was surrendered in April, 1897. In the same month the Remington-Sholes Company was incorporated under the laws of Illinois, and purchased all the assets, good-will, trade-marks, trade-names, etc., theretofore belonging to said Fay and to said Remington-Sholes Typewriter Company. Since its organization said new company has continued at the same factory and through the same instrumentalities as before used by the old company and by Fay to manufacture and sell its typewriters.

The organization of the Remington-Sholes Company was in purpose and in effect a reorganization of the old company (R. 410; 431), the plan being to divide the common stock of the new company amongst the stockholders in keeping with the amounts of cash actually invested by them in the old company. The allotment of 150 shares of stock to Franklin Remington was admittedly in keeping with such plan, as he had invested $15,000 cash in the old company. (R. 430; 434.) Z. G. Sholes received no stock in the new company, because, by sales of his stock in the old company, he had already been re-

imbursed for his expenditures in connection with his original machine. (R. 431-432.)

**Distinguishing Marks of Defendant's Machine.**—Every machine put upon the market by the old Remington-Sholes Typewriter Company, and its successors, up to the middle of the year 1900 (R. 555) (nearly two years after the filing of the bill of complaint) had a highly ornamental, bronzed frame of very unique design. This frame both as to shape and coloring was a radical departure from the conventional plain black enamel frames invariably used upon complainant's and other typewriting machines. The machines made and sold by the defunct Remington-Sholes Typewriter Company were extensively advertised as the "Remington-Sholes" (R. 438), and were conspicuously marked with the words "REMINGTON-SHOLES, CHICAGO." While Mr. Fay conducted the business in his own name pending the reorganization, the same marks were retained. When the new company took possession of the plant and business, the trade-mark "REM-SHO" was adopted and from that time all of its machines have been marked also upon the cross-bars with the words "REMINGTON-SHOLES COMPANY, Mfrs., CHICAGO." The name "REM-SHO" was registered as a trade-mark October 19, 1897.

From the very beginning of its business and even before actually placing its machines upon the market, the Remington-Sholes Typewriter Company advertised conspicuously and in divers ways the fact that its machine "was not the Remington Standard Typewriter" and that it had no connection with complainant or its machine, and the salesmen and dealers were invariably instructed to guard carefully against all danger of possible confusion between the two companies and their respective machines.

(See, for example, R. 439; 1258; 306; 440; 1041; 1142; 1169; 1262; 1278; 1309; 1322; 1331.) All of the catalogues circulated by defendant (and these catalogues have been distributed broadcast throughout the country) contained in connection with the history of defendant's machine the following statement:

> "We state then emphatically that this company has no connection whatever with that well known and excellent machine, the Remington Standard Typewriter, and caution all possible customers against confusing the 'Rem-Sho' with that machine or any other."

**The question raised at the threshold of this case is whether a corporation that has adopted for use as a trade-mark an ordinary personal name can prevent the use by another corporation as part of its corporate title of the same personal name.**

That a personal name cannot be exclusively appropriated by anyone as against others having a right to use such name, is conclusively settled by the repeated decisions of this court.

*Brown Chemical Co.* v. *Myer et al.*, 139 U. S., 540.
*McLean* v. *Fleming*, 96 U. S., 245.
*Canal Co.* v. *Clark*, 13 Wall., 311.
*Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169.
*Elgin Nat'l Watch Co.* v. *Illinois Watch Case Co.* 179 U. S., 665.
*Goodyear Rubber Mfg. Co.* v. *Goodyear Rubber Co.*, 128 U. S., 598.

Nor is the fact that a complainant asserts an exclusive

right to a personal name, in part, at least, because of its registration as a trade-mark in the U. S. Patent Office of any moment, as the authorities are uniform in holding that registration cannot add to a complainant's right to relief nor give validity to an otherwise invalid trade-mark.

*Elgin Nat'l Watch Co.* v. *Illinois Watch Case Co., supra.*

*Sarrazin* v. *Irby Co.*, 93 Fed. Rep., 625 (C. C. A.)

In *Brown Chemical Co.* v. *Myer et al., supra*, this court, in speaking by Justice Brown, after referring to numerous cases in which a defendant had been restrained from using his own name in a fraudulent manner, said:

> "These cases obviously apply only where the defendant adds to his own name *imitation of the plaintiff's labels, boxes or packages*, and thereby the public are induced to believe that his goods are those of the plaintiff. A man's name is his own property, and he has the *same right* to its use and enjoyment, as he has to that of any other species of property. If such use be a reasonable, honest and fair exercise of such right, he is no more liable for the incidental damages he may do a rival in trade, than he would be for an injury to his neighbor's property by the smoke issuing from his chimney, or for the fall of his neighbor's house by reason of necessary excavations upon his own lands. These and similar instances are cases of *damnum absque injuria.*"

Inasmuch, therefore, as the personal name "Remington" was one incapable of exclusive appropriation, it follows that any one of like name has the same right to its use and enjoyment as he has to any other species of property so long as such use be exercised in a reasonable, honest and fair way. The case at bar, therefore, falls plainly within the language of this court in *Elgin National Watch Co.* v. *Illinois Watch Case Co., supra*, where it was said:

"If a plaintiff has the absolute right to the use of a particular word or words as a trade-mark, then, if an infringement is shown, the wrongful or fraudulent intent is presumed, and although allowed to be rebutted in exemption of damages, the further violation of the right of property will nevertheless be restrained. But where an alleged trade mark is not in itself a good trade mark, yet the use of the word has come to denote the particular manufacturer or vendor, **relief against unfair competition or perfidious dealing will be awarded by requiring the use of the word by another to be confined to its primary sense by such limitations as will prevent misapprehension on the question of origin.**"

*Goodyear Rubber Mfg. Co.* v. *Goodyear Rubber Co.*, 128 U. S., 598.

*Centaur Co.* v. *Marshall*, 97 Fed. Rep., 785 (C. C. A.).

Not only are the sweeping decrees rendered in the case at bar repugnant to the decisions of this court in the Singer case, the Elgin Watch Co. case, and the Goodyear case above noted, but such decrees plainly ignore also the rule there established by this court that, where a word, adopted by a plaintiff as a trade-mark, is a name incapable of exclusive appropriation, the most that can be required of a defendant is that he shall adequately inform the public that his wares are not those of plaintiff's manufacture, since such decrees have been rendered in the face of the fact that the defendant's machines were invariably marked with the manufacturer's name and address (the adequate information required by this court to be given in the Singer case), and in the face of the further fact that the defendant, by its widely distributed catalogues, call the attention of the public to the fact that it had no connection with the complainant or its machine. In the Goodyear case this court, after holding that the designa-

tion "Goodyear Rubber Co." was one incapable of exclusive appropriation, made plain its view that the issuance by a defendant of catalogues or circulars distinguishing its wares from those of the plaintiff was irreconcilable with the pretense that it was seeking to palm off its goods upon the public as those of plaintiff's. This court there said (128 U. S., 604):

> "The case at bar cannot be sustained as one to restrain unfair trade. Relief in such cases is granted only where the defendant, by his marks, signs, labels, or in other ways, represents to the public that the goods sold by him are those manufactured or produced by the plaintiff, thus palming off his goods for those of a different manufacture, to the injury of the plaintiff. *McLean* v. *Fleming*, 96 U. S., 245; *Sawyer* v. *Horm*, 4 Hughes, 239; *Perry* v. *Truefitt*, 6 Beavan, 66; *Croft* v. *Day*, 7 Beavan, 84.
>
> "There is no proof of any attempt of the defendant to represent the goods manufactured and sold by it as those manufactured and sold by the plaintiff; but, on the contrary, **the record shows a persistent effort on its part to call the attention of the public to its own manufactured goods, and the places where they are to be had, and that it had no connection with the plaintiff.**"

And in the Singer case this court said (163 U. S., 200):

> "This leaves only two questions, first, whether that name as used in the circulars and advertisements of the defendants is accompanied with such plain intimation as to the source of manufacture of the machines by them made as to make these circulars and advertisements lawful; and second, whether this also is the case with the use of the word 'Singer' on the machines which the defendant makes and sells. As to the first of these inquiries **the proof shows that the circulars were so drawn as to adequately indicate to any one in whose hands they may have come that the machines therein referred to were made by the June Manufac-**

**turing Company, and not by the Singer Company."**

The defendant in the Singer case was found guilty of unfair dealing for the reason that it had failed to mark its machines with sufficient notice of their source of manufacture—a charge that certainly cannot be imputed to the defendant in the case at bar since the inscription "Remington-Sholes Company, Mfrs. Chicago" has been invariably used upon defendant's machines.

Your Honors will notice that the decree of the Circuit Court of Appeals in this cause, in the absence of any imitation of the characteristic marks of complainant's machine and in the face of the fact that defendant's machines are distinctly marked with the manufacturer's name and address, without qualification or reservation enjoins your petitioners from the use of the personal name "Remington" in any manner whatsoever upon typewriting machines, the injunction being more particularly directed against the placing upon typewriting machines put forth by your petitioners of the inscription "Remington-Sholes Company, Mfrs. Chicago." If the giving by a person of his name to a corporation organized by him of which he is an officer, and to which his whole time, capital and energy are devoted, be a "reasonable, honest and fair exercise" of his right to use his name, then the decisions of the Circuit Court and Court of Appeals in this cause are manifestly in error and repugnant to the decisions of this court.

The history of the organization of the Remington-Sholes Typewriter Company, as briefly given in the foregoing statement of facts, must satisfy this court upon the following points:

1. It was *reasonable* that Remington and Sholes should form a corporation for the manufacture of their

typewriter (*a*) because alone they had not the capital necessary to manufacture it; (*b*) because corporate management is regarded as the most effective form of business enterprise; (*c*) because all other typewriters are made by corporations.

II. It was *reasonable* that they should adopt the name "Remington-Sholes" for their machine because both Remington and Sholes had labored incessantly for many months in the production of the machine, Sholes contributing his inventive genius and Remington, after giving up all other work, furnishing not only the funds to effect the reconstruction of the machine and its exploiting, but conferring with Sholes as to every detail of change made therein.

III. It was *reasonable* that the corporation created to make this machine should bear the names of both Remington and Sholes (*a*) because it was to manufacture a machine that was distinctly the product of and owed its existence to both; (*b*) because it is the almost universal custom in the typewriter trade to identify by the same name the corporation and the machine that it is to manufacture; (*c*) because Sholes' father having invented the pioneer typewriter, which the company whereof Remington's father was president gave to the world, the public would be interested in the coming together of these sons; (*d*) because the family name of Remington had a world-wide reputation in many lines of trade older than and distinct from the good-will of the typewriter business; (*e*) because the public is attracted by family reputation in trade as it is in the professions; (*f*) because the courts, and the public common sense, recognize the value of a father's good name and a son's right to avail himself of it; (*g*) because having a right to use their names like ordinary property they had a right to bestow such names

in the usual way upon a corporation of their own creation, in which they held a large part of the stock and to which all their time and energies were devoted.

IV. It was *reasonable* that the reorganized Remington-Sholes Company should adopt and continue to bear the name of the old company, (*a*) because it was the successor to the old company; (*b*) because by the retention of the name under which its predecessors had advertised the machine it could hope to better retain the trade; (*c*) because the highest courts of the German Empire in a suit instituted by this complainant had emphatically declared that the name "Remington-Sholes" was lawfully and properly used.

The real question is not whether Messrs. Remington and Sholes could have *abandoned* the use of their names, but whether under all circumstances the use which they made of their names was a *reasonable* and a fair one. In determining the reasonableness of the use of the name "Remington-Sholes" for a corporation designed to manufacture typewriters produced by Messrs. Remington and Sholes, regard will be had to those trade customs disclosed by the record and judicially noticeable that are plainly pertinent to the question. Thus it is but fair to notice not only that in all lines of industry the trend of modern manufacture is toward corporate management, but especially is this true of the typewriter trade. All the numerous typewriting machines now upon the market are made by corporations, and these with but very few exceptions bear the names of the inventors or the manufacturers of the machines. Thus we find the "BLICKENSDERFER," the "DENSMORE," the "HAMMOND," the "JEWETT," the "FISHER," the "ELLIOTT & HATCH," the "ODELL-YOUNG," the "OLIVER," the "SMITH," the "FOX," the

"WELLINGTON," the "YOST," and the "HALL," besides various other well known machines manufactured by corporations of like names. In giving their names to the machine and to the company organized for its manufacture, Messrs. Remington and Sholes were but following the established custom of the typewriter trade. Certainly in the light of all the facts no course could have been more *reasonable* or fair.

In their opinion the majority of the Court of Appeals assert that the incorporators of the old Remington-Sholes Typewriter Company knew "that the use of the name 'Remington' in connection with the typewriting machine would help to sell it as the name of 'Brown' and 'Peterson' would not." Possibly it would, but certainly this can not alter the fact that inasmuch as the production of the finished machine was due to the joint labors of Remington and Sholes and to the capital of the former, it was reasonable to employ both names. The family name of REMINGTON has for the past forty years held a reputation in the markets of the world different from that of "BROWN" or "PETERSON." It has stood as a synonym of good workmanship so long and in such different fields of manufacture that few if any American names show as divers and wide a reputation. In this respect it is almost unique, and many a name although of great distinction in some single line of industry seems insignificant by comparison. Had Franklin Remington embarked in the manufacture of sewing machines, or agricultural implements, or indeed of any other line of machinery, particularly if designed for international trade, the world-wide reputation of his family name would have unquestionably prompted its use. We submit, however, that it would scarcely seem reasonable that a son of Westinghouse, of Edison, of Corliss, of Carnegie, of

Bessemer or of Krupp should voluntarily conceal his identity even though a Brown or a Peterson might do so. The simple fact is that men pride themselves upon their family reputation, and, however democratic we may be, it must be admitted that we view with a deeper interest the son of such a distinguished father and look to find in him a measure of inherited skill.

The courts have repeatedly recognized the fact that the value attaching to the good reputation of a man's name is a most appropriate reason for its use by his son when engaging in business; and, where such reason exists, the leading cases have allowed such name to be prominently used by his son when associating himself with others, although a degree of confusion in trade has arisen that would have been avoided had the name selected for the firm been that of one or more of his associates. Thus, in the case of *Meneely* v. *Meneely*, 1 Hun., 367, which has been repeatedly cited with approval by this court (*McLean* v. *Fleming*, *supra*; *Singer Mfg. Co.* v. *June Mfg. Co.*, *supra*), and by the Federal and State Courts generally, it was said:

> "In the case at bar, the defendants have not used the firm name of the plaintiff, or any name by which it has been heretofore known or designated, but the name of 'Meneely & Kimberly' as constituting a co-partnership, while engaged in the same business as the plaintiffs have, for a long time, carried on. The objection is to the employment of the name of 'Meneely' in connection with the same business as the plaintiffs, at the place where the defendants are located, which is in the city of Troy on the opposite side of the Hudson River from where plaintiffs are situated. . . .
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> "The question then arises, whether the defendants are liable to be enjoined without having done any wrongful act and merely because they assumed to use the name of one of them in connection with a

business in which the ancestor of that defendant and of the plaintiffs had been engaged, and which by a life of industry and toil, and by skill he had made profitable, and an invaluable inheritance for his posterity. **The right to the enjoyment of a good name, personally or in connection with a business established by the labor and integrity of an ancestor is an inestimable privilege which cannot be too highly prized. As a general rule, every individual is entitled to the full benefits and advantages which such a privilege confers and should not be deprived of the same by the interference of the courts except in extraordinary cases and for the most cogent of reasons.** . . . . The defendant Clinton H. Meneely claimed the right to profit from the name which he inherited, and the good reputation which his father had earned in the business of bell founding. He was open and above board in declaring thus to derive advantage, and formed a partnership and conducted his business with the expectation and belief that profit would accrue to him by reason of the good name and celebrity which had attended his father's successful career. I am inclined to think that in this respect he committed no wrong, and that he has a perfect right to use his own name in his own business even although that name was the same as the one used by the plaintiffs and the business precisely of the same character."

. . . . . .

**"There is quite a distinction between appropriating the good will of the business of a deceased father carried on at a particular locality and enjoying the benefit of his name as a man of skill and fair dealing in the business in which he was engaged."**

And upon the appeal of the Meneely case (reported in 62 N. Y., 427) the decision of the General Term of the Supreme Court was affirmed, the court saying:

"The bare statement of the scope of the injunction would seem to be sufficient to show that it ought

not to have been granted and that the judgment awarding it was erroneous. The cases referred to in its support fall far short of sustaining it. If the defendants were using the name of Meneely with the intention of holding themselves out as the successors of Andrew Meneely and as the proprietors and managers of the old established foundry which was being conducted by the plaintiffs and thus enticing away the plaintiff's trade, or resorted to any artifices to induce the belief that the establishment of the defendants was the same as that of the plaintiffs, and, perhaps, if without any fraudulent intent they had done acts calculated to mislead the public as to the identity of the establishments and produce injury to the plaintiffs beyond that which resulted from the similarity of names, then the cases referred to sustain the proposition, not that a court of equity would absolutely restrain the defendant Meneely from the use of his own name in any way or form, but simply that the court would enjoin him from using it in such a way as to deceive the public and injure the plaintiffs. **The manner of using the name is all that would be enjoined, not the simple use of it;** for every man has the absolute right to use his own name in his own business, even though he may thereby injure the business of another person bearing the same name, provided he does not resort to any artifices or contrivance for the purpose of producing the impression that the establishments are identical, or does anything calculated to mislead. **Where the only confusion created is that which results from the similarity of the names the court will not interfere.** A person cannot make a trade-mark of his own name, and thus obtain a monopoly of it which will debar all other persons of the same name from using their own names in their own business."

Again, in *National Starch Mfg. Co.* v. *Duryea et al.*, 79 Fed. Rep., 651, the Circuit Court of Appeals for the Second Circuit had before it a case, the facts of which were very like to those of the case at bar. In that case

Hiram Duryea and his brothers had been controlling members of the Glen Cove Manufacturing Company, which had made a wide reputation for starch enclosed in packages labeled "DURYEA STARCH," and bearing a picture of the factory and the name of the company. At the time complainant bought the business, Hiram Duryea agreed not to engage in the manufacture of starch for a period of five years. After the lapse of such time and in 1895, two sons of Hiram Duryea, having no business or reputation, formed a partnership with two former salesmen of the Glen Cove Company and of complainant, and entitled their firm "Duryea & Co.," the capital of the firm being furnished entirely by Hiram Duryea. Duryea & Company caused their starch to be manufactured for them by another company, and it was placed upon the market in packages on which were prominently displayed the words "LAUNDRY STARCH, PREPARED BY DURYEA & CO." and "PURE CORN FLOUR, PREPARED BY DURYEA & CO."

In that case, as in the case at bar, it was alleged that the defendants had made an "unnecessary" and unfair use of the name Duryea, since the firm could have used equally as well the names of the two salesmen who, with the Duryea brothers, comprised it. At Circuit the court found for complainant upon this point on a motion for preliminary injunction, but upon appeal from such decision it was held (79 Fed. Rep., 651) that defendants had not made an unfair, unreasonable or unnecessary use of the name Duryea. The court (Wallace, Lacombe and Shipman, Circuit Judges, and Brown, District Judge) there said:

> "Inasmuch as the defendants have not called their starch by this well-known name, and have not assimilated the labels upon their packages to those

long used by the manufacturers at Glen Cove, the question is whether the defendants have made such an unnecessary and unfair use of the name of 'Duryea' as to deserve the unfavorable criticism of a court of equity. In the recent case of *Singer Manuf'g Co.* v. *June Manuf'g Co.*, 163 U. S., 169, 16 Sup. Ct., 1002, it is declared by the Supreme Court to be a well-settled doctrine that: 'Every one has the absolute right to use his own name honestly in his own business, even though he may thereby incidentally interfere with and injure the business of another having the same name. In such case the inconvenience or loss to which those having a common right are subjected is *damnum absque injuria*. . .

"If the new firm could properly adopt the name of 'Duryea & Co.' and if sufficient precaution were taken to show the public that the manufacture is not that of the successor of the Glen Cove Manufacturing Company, the complainant is not entitled to an injunction. **The firm consisted of four persons, two of whom were named 'Duryea,' and all of whom were without capital, which was furnished by the father of the two Duryeas, and who had now a right to permit his name to be used honestly in the starch business. Under this state of facts the firm was not dealing unfairly with the complainant in calling itself 'Duryea & Co.,' and in omitting to add the name of the former salesmen of the complainant.**

"Upon the second point, whereas the complainant uses the name 'Duryea Starch' and the picture of the Glen Cove factories, and said that it was the manufacturer, the defendants' packages simply assert that the starch which they contain is prepared by Duryea & Co. **We think that this is a sufficient declaration of the source of the manufacture, as distinguished from the well-known source at Glen Cove,** and that the labels are not objectionable, because, by reason of their marked dissimilarity from the complainant's labels, the public could not be misled."

When the Duryea case again came before this Court of Appeals upon the final hearing (101 Fed. Rep., 117), it was said:

> "There is now evidence that the defendant's starch was vigorously pushed upon retail grocers by salesmen whom the purchasers formerly knew as salesmen of the complainant's product, and that grocers made representations, either by acts or orally, to their customers, in regard to the origin of the new product, which indicated either careless ignorance or a willful disregard of the truth. Testimony is given by retail purchasers from the grocers that they were misled by the use of the name Duryea & Co. . . .
>
> "That an incidental interference with and injury to the business of the complainant, which had the exclusive right to the use of the well-known name or title 'Duryea's Starch,' would occur—an injury which would be enhanced by the earnestness of competition in the field which the complainant and its predecessors had labored to occupy—and that injury from honest competition is not remediable by a court of equity, are also manifest. The point which is urged by the complainant is that the defendants use the name of Duryea, and have pressed the article which they sell upon the public by the use of that name 'unaccompanied with any precaution or indication' that the article was not the manufacture of the complainant, and thus that their silence is an artifice which misleads (*Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169, 16 Sup. Ct. 1002, 41 L. Ed. 118); and that neither the original members of the firm nor Hiram Duryea have taken pains to differentiate their goods from those of the complainant. The complainant uses the familiar label, which contained a picture of the factory buildings at Glen Cove, with its name as the manufacturer of the starch in lieu of the name of its predecessor, and with the words 'Duryea's Starch.' The defendant's label is entirely dissimilar, **but it contains the words 'Prepared by Duryea & Co.'**

> "That they gladly welcomed the pecuniary advantage from the right to use the name Duryea is true, but that they presented it to the public as the Glen Cove starch is not true, and, while their label does not say as much as it might have said without detriment to themselves, and with the same injury to the complainant, **yet we think that their starch is shown by the label not to be the manufacture of the complainant,** as the successor of the Glen Cove Company, and not to be identified with the former Glen Cove factories as the source of its manufacture."

Plainly this decision of the Circuit Court of Appeals for the Second Circuit in the Duryea case is in direct conflict with its decision in the case at bar.

**Corporation's right to use a surname.** While the decisions made in the case at bar, affirm the broad proposition so fully established by the authorities that an exclusive right can not exist to the use of a family name, they hold that the use of such a name by a corporation stands upon a different footing. The basis of such ruling is that a corporation, being an artificial body, its organizers have the whole vocabulary to select from, and hence are in duty bound to avoid the selection of such a name as may in any manner interfere with the business of those using like names.

The answer to all of this is that the law as established by the decisions of this court recognizes the right of every man to use his name *reasonably and honestly in every way*, whether such use be effected by him alone or associated with others, either in a firm or corporation; and, on the other hand, it condemns a dishonest use wherever and however practiced.

Inasmuch as the courts have thus invariably recognized the right of a person to use his family name fairly in

the business of a firm in which he is honestly engaged, we submit that in reason no distinction can be made between the use of such name in a firm and its use in a corporation, for in both cases the names adopted are alike selected and artificial.

A corporation is in effect but a partnership, and the court will take judicial notice of the fact that of late years it has become a common practice to adopt family names for corporations in precisely the same manner as such names are used for firms; witness, for example, complainant's name, Wyckoff, Seamans & Benedict, and the corporate name, E. Remington & Sons. Indeed, if a common usage can prove the reasonableness of the adoption of a personal name for a corporation, the court need but notice the fact appearing from this record that nearly all typewriting machines on the market to-day are manufactured by corporations employing such personal names.

Manifestly, when one incorporator has an unrestricted legal, moral and commercial right to the use of a family name that has acquired a world-wide reputation for honesty and good workmanship, he can contribute to corporate advancement and prosperity by allowing a company to use his name (where, as in the case at bar, he holds a substantial interest in and is an important member of such corporation, and is devoting his entire time to the management thereof) in the same way and for precisely the same reason that he could use such name in connection with a partnership business.

Certainly it would be absurd to contend that Messrs. Remington and Sholes were not at liberty to engage in the typewriter business under the firm name of "Remington & Sholes," or associating others with them under the firm name of "Remington, Sholes & Company," and yet if such use of these names be reasonable and permissible

it is difficult to perceive why they might not proceed with equal reason and fairness to follow the accepted custom of giving their names to a corporation organized and managed by them. As was said by the Court of Appeals for the Second Circuit in the recent case of *Baker* v. *Baker,* 155 Fed. Rep., 297 (300):

> "As regards the complainant, it is wholly immaterial whether the business is conducted as that of a corporation or that of an individual by the same designation."

In *Celluloid Mfg. Co.* v. *Cellonite Mfg. Co.*, 32 Fed. Rep., 94, the learned Justice Bradley said:

> "The fact that both are corporate names is of no consequence in this connection. They are the names by which the parties are known, and are to be dealt with **precisely as if they were the names of private firms or partnerships.** The defendant's name was of its own choosing, and if an unlawful imitation of the complainant's, is subject to the same rules of law as if it were the name of an unincorporated firm or company."

If a man's use of his name is to be held so limited that he can not employ it in the ordinary way and for a recognized and legitimate purpose in trade, then is set at naught the language of this court in *Brown Chemical Co.* v. *Meyer, supra,* that "a man's name is his own property and he has the SAME right to its use and employment as he has to any other species of property."

In *Industrial Mutual Deposit Co.* v. *Central Mutual Deposit Co.*, 66 S. W., 1032, the Court of Appeals of Kentucky in refusing to enjoin defendant against the use of its corporate name, said:

> "Thus, in Elliott on Private Corporations (section 48) it is said: 'The rule most consistent with principle is that a corporation will be protected in the use of its name upon the same equitable principles

which protect persons in the use of trading names and trade-marks.' There is, however, one well recognized exception to the rule, and this is that a trade-name consisting simply of a generic term will not be protected."

In *Monarch* v. *Rosenfeld et al.*, 39 Southwestern Rep., 236, the following pertinent language was used:

"Now, it is argued that the court by its judgment limits S. I. Monarch to the use of his name in business alone or as a partner, but as a stockholder in the corporation he can not use his name in the corporate business, its property is in no sense his property, its business is not his. *I do not think that is the meaning of the judgment or opinion.* . . . It is conceded that he can in good faith form a partnership with Rosenfeld & Hirsch in the whiskey business and the firm might use his name. **If the firm can, in the light of the opinion, there is no reason why his name cannot be used in the corporation. . . . Plaintiff can be injured no more in his business by a corporation than he can by such a firm. . . .**

"So, the only question is, if S. I. Monarch can go into business in good faith with any corporation, and use his name in branding its barrels with his name, he can do it with the defendant. In 1 Mor. Priv. Corp. (2nd Ed.) Sect. 1, it is said: 'However, it is essential to a clear understanding of many important branches of the law of corporations to bear in mind distinctly that the existence of a corporation independent of its shareholders is a fiction, and that the rights and duties of an incorporated association are in reality the rights and duties of the persons who compose it, and not of an imaginary being.' I do not doubt but that in certain kinds of corporations a stockholder can authorize the corporation to use his name, and for some purposes its business is his business. **It is known to all—the knowledge is so universal that I think the court can take notice of it—that in these days the practice and custom has grown up among business men that when two or three associate themselves**

**together for the purpose of engaging in any trade or business of any magnitude, instead of forming a partnership to conduct and carry on said business, they form a corporation; they invest in it all of their capital, give to it all of their time and attention. In reality, it is their business. But for fiction of law, such an association would be a partnership.** If the Court of Appeals meant to say that S. I. Monarch could not use his name in such a corporation, he has, after all, but a limited right to use his name in business. I do not think such is the meaning of the court."

In *American Cereal Co.* v. *Eli Pettijohn Cereal Co.*, 72 Fed. Rep., 903 (affirmed by C. C. A., 76 Fed. Rep., 372) Showalter, C. J., said:

"An injunction was prayed to stop the use by defendant of the name Pettijohn in defendant's corporate name and in the designation of defendant's product, and to stop the use by defendant of the wrapper or any wrapper showing the name Pettijohn. . . . It can hardly be contended that he (Eli Pettijohn) had not then the right to make, or rather to continue to make rolled wheat and to market the same in packages bearing his name in any part of the United States. Neither complainant nor its assigns could by advertising the name Pettijohn prevent Eli Pettijohn from doing this. **It would seem to follow also that he might secure the co-operation of others willing to assist him financially in the business, and that he might with such co-operation form a corporation for the purpose of carrying on such business;** *provided always he should take reasonable precautions to distinguish the business thus carried on by him from that of a competitor rightfully using the name Pettijohn*".

In *Hazelton Boiler Co.* v. *Hazelton Tripod Boiler Co.*, 142 Ill. Sup., 494, the court recognized the right of Hazelton to give his name to the defendant corporation, and in so doing said:

> "If any confusion has occurred it has arisen from the similarity of the corporate names, and not from any attempts on the part of the defendants to deceive. . . . If injury results to the complainant from such cause, it is *damnum absque injuria.*" (P. 509.)

In *Scott Stamp & Coin Co., Limited,* v. *J. W. Scott Co., Limited,* 15 N. Y. S., 325, the facts were as follows: J. W. Scott had been a most prominent dealer in stamps, coins, etc., when by a written contract he assigned to another, and the business was continued for some time under the name "Scott & Co." or "J. W. Scott & Co." By agreement, complainant corporation was organized and defendant took stock therein in part payment. The contract provided that Scott should not engage in the same business for two years, nor while he held stock in the complainant corporation. About three years after the date of the contract, Scott having sold his stock, again engaged in business under the name "J. W. Scott Co., Limited." The court, after a careful review of the authorities, found that defendant had a full right to use its name, and in this connection said:

> **"Inasmuch, therefore, as J. W. Scott, after the lapse of two years, had the right to engage in a similar business under his own name, he had a right to give his name to the defendant corporation,** and the mere fact that mistakes are made by customers, and that confusion arises, does not give to the plaintiff any right to an injunction. *Employers' Etc., Corp.* v. *Employers' Etc., Ins. Co.,* 10 N. Y. Supp., 845; *Blakslee Manuf'g Co.* v. *Blakslee's Sons Iron-Works,* decided July 23, 1887. The opinion of Barrett, J., in the case last referred to, makes this so clear that it is not necessary to do more than reiterate his language, which is directly applicable here. He says: 'I see no reason to believe that Mr. E. G. Blakslee, in forming the defendant corporation, sought to deceive the public, or

to wrong the plaintiffs. The intention has been legitimate, namely, to disclose the truth, and not to conceal it. Mr. Blakslee had a perfect right to let the public know that, although his name was being used as part of plaintiff's corporate title, he had no connection with the plaintiff. He and his sons had also a right to transact lawful business under their own names, so put forward as to indicate the simple truth and not to deceive any one. . . . **If the sons, with their father, could do business lawfully under the defendant's name, there is no good reason why that same name given to a corporation should be unlawful. It is still their own name applied as the law permits, and, so long as there is no deceit or fraud, they cannot be restrained from transacting, in what is substantially their own names, their lawful business.'** The case of *Holmes* v. *Manufacturing Co.*, 37 Conn., 278, is no authority to the contrary." (Pp. 326-327.)

In *Employers' Etc. Co.* v. *Employers' Etc. Co.*, 10 N. Y. S., 845, it was said:

> "There is no difference in principle between the use of an individual or copartnership name and that of a corporate name."

In *Continental Ins. Co.* v. *Continental Ass'n.*, 96 Fed., 846 (affirmed by C. C. A., 101 Fed., 255), the court said:

> "Counsel for complainant contends that it would have been a simple and easy matter for the incorporators of the defendant company to have selected a distinguishing name for it without having chosen a term already appropriated by a corporation engaged in a like business. This is true, and it is also true that the defendant might not suffer any serious pecuniary loss by the granting of the injunction prayed for in this cause; yet it is the opinion of the court that the incorporators of complainant by appropriating a generic term, purely descriptive, and in general and prevalent use, and in failing either to fix upon

an arbitrary term, or to draw upon the realms of fancy for a name, or to select one indicative of the origin or ownership of the business about to be launched, failed to vest complainant with a distinguishing appellation, the exclusive right to the use of which the courts could declare to be in complainant."

*Meriden Co.* v. *Parker*, 39 Conn., 450.

*S. Chivers & Sons* v. *S. Chivers & Co., Ld.*, 25 Trade-Mark Rec., 289.

In *Columbia Mill Co.* v. *Alcorn*, 150 U. S., 460, this court, after reviewing various cases in which it was held that geographical and like terms could not be exclusively appropriated, recognized that the same principles of law govern the use of both geographical and family names. When, therefore, the Supreme Court, in *Goodyear Co.* v. *Goodyear Rubber Co., supra*, held that the name "Goodyear Rubber Co." was incapable of exclusive appropriation, the fact that the name was descriptive of an article instead of being descriptive of a class or family took nothing from the force or application of the rule. And when the court there said "nor will the incorporation of a company in the name of an article of commerce, without other specification, create any exclusive right to the use of the name," it made plain its view that a corporation had no greater right than an individual to usurp a descriptive name. The reason, quoted by this court from the leading case of *Canal Co.* v. *Clark*, viz., "it would greatly embarrass trade and secure exclusive rights to individuals in that which is the common right of many," applies as fully to family names as to others in which many enjoy a common right. This Goodyear Company case is the leading case in which this court has had occasion to pass upon the attempt of one corporation to enjoin another from using in its corporate title a name to

which others had a common right, and the unmistakable language in which it condemns such attempt should leave little doubt in the minds of any one as to the disposition that should be made of a case like that at bar, where a corporation is seeking to monopolize the use of a family name.

It is true that in some cases the courts in condemning the unreasonable use of a name have emphasized the fact that such use was "unnecessary;" but, strictly speaking, the *necessity* for the use of a name as a test of the right to its use is without warrant in the decisions of this court or in common sense. The fact that a man may always readily conceal his identity under a corporate or a firm name proves the lack of *necessity* for such use in any case. The law simply requires that he shall enjoy the right to the use of his name as he would enjoy any other species of property—in a fair and reasonable manner. He is no more expected to abandon such use or to unreasonably restrict it than he would be expected to abandon the use of his chimney (in the illustration used by Justice Brown) and run a stovepipe through another part of his house merely because the smoke of his chimney was offensive to his neighbor.

It is undoubtedly true that in a number of cases that have come before the State and Federal Courts, a distinction has been made between the use of a personal name by an individual and the use of a like name for a corporation. In such of these cases as presented facts showing that the defendants there were by their conduct estopped to bestow their names upon corporations, the decisions were presumably correct; but your Honors will observe that in the case at bar, it has never been contended that either Franklin Remington or Mr. Sholes ever committed any acts or ever bore any such relations to complainant

as to diminish in any manner their natural right to use their names in every legitimate way in business.

The opinion of Judge Coxe in this cause is based solely upon the case of *Rogers* v. *Rogers*, 70 Fed. Rep., 1017, but a reference to the opinion rendered in that Rogers case shows that the man Rogers from whom the defendant corporation derived its name, "sold his name as a decoy or permitted his name to be used for hire to deceive the public." In the case at bar there is not one iota of proof that Franklin Remington ever received any compensation whatever for the use of his name.

Our contention is that the giving of their names to the old Remington-Sholes Typewriter Company was a fair, reasonable and legitimate use of such names under the circumstances of this case. We submit that such authorities as deny an individual's right to confer his personal name upon a corporation organized by him and to which his time, capital and energy are devoted, are in plain violation of the decisions of this court and particularly repugnant to its decision in the case of *Goodyear Rubber Mfg. Co.* v. *Goodyear Rubber Co.*, *supra*, and are opposed to the various leading State and Federal cases to which we have already directed attention.

If the decisions of the Circuit Court of Appeals and of the lower court in this cause are correct and a corporation organized by a Remington and a Sholes can not mark the name "Remington-Sholes Company" upon its typewriting machines, it follows that no other corporation bearing the name "Remington" could employ its name in connection with the manufacture of typewriting machines. The record discloses the fact that there are a number of manufacturing corporations throughout the country bearing the name "Remington"—as for example, the Remington & Sherman Company of Philadelphia, the Reming-

ton Machine Works of Wilmington, the Remington Arms Company of Ilion, and yet under the decisions rendered in this case, not one of these corporations has a right, in case it should see fit to manufacture typewriting machines, to mark its corporate name thereon.

Your Honors will take judicial notice of the fact that at the present time a vast number of corporations bear personal names and this lack of harmony of the decisions renders it of the utmost importance that the law should be settled by an expression of this court. That such lack of harmony exists is generally recognized and in the recent work of Mr. Hopkins on the law of unfair trade it is said with respect to corporate names that "upon this subject the courts are hopelessly confused in their phraseology." (Hopkins on Unfair Trade, p. 110.)

In such construction that author also uses the following pertinent language (p. 112):

> "It is a self-evident proposition that a generic word embodied in a corporate name is not entitled to protection in equity." (Citing *Goodyear Co.* v. *Goodyear Co. supra.*)

Continuing, the author says (p. 113):

> "In conclusion, there is no practical difference, so far as equitable rights and remedies are concerned, between corporate names and the name of a copartnership or an individual."

**German Litigation.** The record in this cause shows that the typewriting machines of complainant, as well as those bearing the name "Rem-Sho" and the words "Remingtor-Sholes Company, Mfrs. Chicago" have a world-wide market, and while the issues in this cause

are by the bill of complaint specifically limited to acts within the United States, this court will perceive not only how the foreign trade but also how the impending foreign litigation must be affected by the final decision herein.

No litigation was brought by complainant against defendant or its principal until the filing of this suit, more than four years after the protest of June, 1894. But while the machine manufactured by the old Remington-Sholes Typewriter Company and marked with the words "Remington-Sholes, Chicago" were being sold in Germany by one Henry Newald, a suit was brought there against him by complainant's agents, Glogowski & Co., by whom the name "Remington" had been registered in the German Patent Office as a trade-mark for typewriter machines. *The case went from the lower courts to the German Imperial Supreme Court and it was there held that in view of the history of the Remington-Sholes Typewriter Company the name "Remington-Sholes" could be properly and lawfully used upon machines of its manufacture.* (R. 29 and 1433.)

As these German decisions could not under the rulings of our courts be set up in support of a plea of *res adjudicata* they were not formally offered in evidence, but notice was given upon the record (R. 1433) that at the hearing of the cause they would be referred to, and counsel for complainant was furnished at that time with copies of the decisions and with translations thereof. For the convenience of the court this petition is accompanied by a translation of these decisions (Exhibit A), the correctness of which translation has never been questioned. A consideration of these will show that the history of complainant and of the Remington-Sholes Typewriter Company was set forth before the German courts, and it was strenuously urged by the German representatives of com-

plainant that the name "Remington-Sholes" was adopted for the fraudulent purpose of deceiving the public, and should be enjoined.

In the decision of the Kammergericht, promulgated October the 15th, 1897, the following pertinent language appears:

> "Accordingly, the defendant, who in this locality sells the typewriters of the Remington-Sholes Typewriter Co. of Chicago, cannot be prohibited from affixing said business name upon the goods of said house nor from using it in the course of business, or announcements, advertisements, etc. It is not open to dispute, that the defendant deals only in typewriters made by said concern, and that he actually obtains his goods from said concern.
>
> "The plaintiffs have tried to establish that the Remington-Sholes Typewriter Co. has unlawfully and sneakingly appropriated the word Remington. They do not dispute that two descendants of the typewriter manufacturer Remington, Franklin and Carver Remington, were among the founders of the concern and are still interested in the same; but again they claim that Franklin and Carver Remington entered into said concern only *pro forma*, to bestow upon it an apparent right to use their name so well known in this line of business. However, whatever the plaintiffs have actually shown by way of foundation to their opposition to the use of the name Remington can in no wise give rise to the conclusion, that in this instance a business name has been sneakingly appropriated. The plaintiffs have confined themselves to the following statement: Franklin and Carver Remington are the sons of Samuel Remington, one of the copartners of the old firm of Remington & Sons; neither of them have ever had anything to do with the running of the business of said firm, or, before entering into the present business under the name of Remington-Sholes Typewriter Co. ever occupied himself with the manufacture of typewriters. But even if both these points had been fully established, it would not

result therefrom, that the two Remingtons would not become real associates in said new house and were only *pro forma* engaged by said house, that their name might be used for improper purposes. **For it is quite possible, yea, even probable, that they should have seriously devoted themselves to the business of their father, and acquired special knowledge, in which they were formerly lacking. To choose this business, in order to take advantage of the reputation attached to their name in this line of business, they have a perfect and indisputable right."**

Upon a revision or rehearing of the German case, the Reichsgericht (Imperial Supreme Court), by a decision published October 22, 1899, refused to reverse the decision of the Kammergericht.

That these decisions of the German courts, although not of controlling force should be recognized as precedents, is fully established by the authorities.

*Liebig Extract of Meat Co.* v. *Libby, McNeill & Libby,* 103 Fed. Rep., 87 (89), (C. C. A.).

*Centaur Co.* v. *Heinsfurter,* 84 Fed. Rep., 955 (C. C. A.).

*Singer Mfg. Co.* v. *June Mfg. Co.,* 163 U. S., 169.

The pendency of the suit brought by complainant against the Fay-Sholes Company in the United States Circuit Court for the Northern District of Illinois and the order of that court making the determination of such suit dependent upon the determination of this cause, presents a further reason why the present petition should be granted. So also, the failure of the Court of Appeals to pass upon the error of the lower court in admitting the

vast amount of testimony introduced by complainant as to foreign acts, advertisements and other irrelevant matters, and to tax complainant with the costs thereof has imposed upon the petitioners herein a burden of costs from which they are clearly entitled to be relieved.

The statement in the opinion of the Circuit Court of Appeals that it does "not find in this voluminous record sufficient evidence that defendant (by which name the Remington-Sholes Company is specifically designated) has itself done anything to promote confusion in the minds of the public, except to use the name Remington on its machine and in its literature" renders unnecessary a discussion of the vast amount of testimony with respect to the acts and advertisements of foreign and independent dealers that was brought into this case against defendant's protest; although this finding of the Court of Appeals plainly shows its error in failing to tax the cost of such testimony against complainant. If opportunity is afforded we stand ready to satisfy this court that complainant's voluminous record is not only devoid of a single instance of actual deception of the public, but that it shows merely an insignificant number of instances of mistakes upon the part of the public that under the findings of the courts in this cause have inflicted no damage upon complainant. We are prepared further to show this court that the whole history of defendant's principal is marked not merely by the absence of any fraudulent intent to trespass upon complainant's good-will, but by a distinct endeavor in every conceivable way—by the dress of its machine, by its signs and circulars, by its instructions to salesmen, agents and dealers—to prevent even the possibility of confusion in the public mind. The stigma of fraud placed upon these petitioners by the final

decree of the lower court is one which we conceive should be wiped out by the correction of such decree.

In conclusion we submit that in view of the novel question presented in this case and upon all the facts thereof, this petition for a writ of *certiorari* should be granted.

AUSTEN G. FOX,
JAMES H. PEIRCE,
GEORGE P. FISHER, JR.,
WM. HENRY DENNIS,
*Attorneys and of Counsel for Petitioners.*

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# Supreme Court of the United States.

## OCTOBER TERM, A. D. 1903.

*No. 445.*

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY, PETITIONERS,

*vs.*

WYCKOFF, SEAMANS & BENEDICT, RESPONDENTS.

## REPLY BRIEF FOR PETITIONERS.

I. So widespread is the habit of incorporating business enterprises that have long been carried on by partnerships that the question here presented is of true public importance. This of itself should incline this court to take jurisdiction, even without regard to the conflict between decisions in the lower courts. The great importance of this suit to the petitioners constitutes no ground for granting the petition. The existence of a conflict between decisions on a question of general law *is* a ground for granting the petition. Especially is this so when the question of general law is novel and is often before the courts in litigations involving great interests to many litigants. The statement in Hopkins on Unfair Trade (p. 110), that upon the question here presented "courts are hopelessly confused in their phraseology," describes only too accurately the conflict between decisions in some of the Federal as well as State courts. See National Starch Mfg. Co. *vs.* Duryea, 79 Fed. Rep., 651; 101 *id.*, 117; Baker *vs.* Baker, 115 *id.*, 297, in which the court of appeals for the second circuit said it was "wholly immaterial whether the business is conducted in the name of a corporation or that of an individual by the

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NOTE.—The question of general law which is involved in this suit has not become "academic," as suggested in the respondent's brief. The petitioner was obliged to change its name or be guilty of contempt.

The court should not be misled by the size of the record. The issues on which the bulk of testimony was introduced have been cut out by the lower court, and there remains only the question of the petitioners' right to use under a charter of incorporation the names which it is conceded they may use as individuals.

same description;" American Cereal Co. *vs.* Eli Pettijohn Cereal Co., 72 Fed. Rep., 903 (aff'd, 76 *id.*, 372); Celluloid Mfg. Co. *vs.* Cellonite Mfg. Co., 32 *id.*, 94; also the State court cases cited in petitioners' brief. Cases *contra* are cited in respondent's brief, page 27.

It is noticeable that respondent does not attempt to distinguish this suit from that of Goodyear Rubber Mfg. Co. *vs.* Goodyear Rubber Co., 128 U. S., 598.

Counsel for respondent nowhere assert that Remington and Sholes could not as partners have rightfully engaged in the manufacture of typewriting machines under the name of "Remington & Sholes," and the undeniably novel question presented for the first time to this court is whether there is anything in law or reason to deprive individuals of the right to bestow their names—in keeping with custom and in the absence of estoppel—upon a corporation organized and managed by them, in which their capital is invested, in which they are large stockholders, and of which they are officers. A familiarity with the conflict between current decisions of the United States courts and of the State courts makes apparent the desirability of a pronouncement by this court upon this question.

II. There is error of fact in the assertion, upon page 27 of respondent's answer (see also p. 18):

> "that the questions at issue in the case pending in the U. S. court for the northern district of Illinois, except as to the matter of accounting, are under the stipulation made and order entered therein already determined by the decision of the court of appeals of the second circuit, and hence there is no danger of a multiplicity of suits as alleged in said petition."

On the contrary, the order in said cause, as shown by a certified copy hereto annexed, provides that further proceedings be stayed until this cause be disposed of by this Supreme Court on *certiorari* or appeal.

III. In their brief (p. 2) counsel for respondent assert that the "essential vice of the petitioners' acts consisted in the adoption and use of the name 'Remington' in the corporate name 'Remington-Sholes Company,'" etc. In its decision the court of appeals (petition, p. 59) says:

> "If it [the Remington-Sholes Co.] had a right to use the same [*i. e.*, the name] it cannot be held responsible for the consequences of such use."

This presents the question in a nutshell. Counsel for respondent plainly reason in a circle, therefore, and as well

also in disregard of the opinion of the Court of Appeals and of the decisions of this court, when they attempt to prove a lack of right to use the name "Remington-Sholes Company" by merely asserting consequences of such use.

This court, in determining petitioners' right to use the corporate name "Remington-Sholes Company" may scarcely be expected, at this time at least, to consider the controverted facts as to the alleged consequences of the adoption of the corporate name "Remington-Sholes Company." The petitioners stand ready, if opportunity be given, to abundantly satisfy this court as to the total absence of any showing of deception or attempted deception of the public by the petitioners or their agents and to show from the record that the instances of mistake even have been few and inconsequential.

The enumeration of alleged advertisements appearing upon page 19 of respondent's answer to petition for *certiorari* is incorrect and misleading. The record does not show that either of the petitioners herein or any *agents* of either of them ever directly or indirectly designated the machines of the Remington-Sholes Company as "Remington Imperial Typewriter," "Remington Typewriter, "New Model Remington," "Remington Machine" or "these genuine Remingtons made by Remington Sholes," but on the contrary it distinctly appears by stipulation in the record (R. 662) that these advertisements were in foreign countries, and by foreign *dealers* who bought the machines from an independent German Company. The statement repeatedly appearing throughout respondent's answer and the brief filed in support thereof as to advertisements alleged to have emanated from "agents *and dealers*" of the petitioners herein is unfair and misleading because the record shows that all adver-

tisements authorized by petitioners or their agents were fair and true, while such advertisements as were unfair were put out in foreign countries by independent dealers beyond your petitioners' control. Reiteration by counsel of the phrase "dealers and agents," however often repeated cannot convert dealers into agents, nor make your petitioners liable for acts of strangers utterly beyond any agency control.

IV. While the statement on page 14 of respondent's answer that the German case was "an affidavit case" and arose under the German trade-mark law is true, it is of no moment, (*a*) because the record here shows (Rec. 85) that such case was presented, in part at least, by respondent; (*b*) because the true history of the adoption of the name "Remington-Sholes" was presented to the German courts as in the case at bar; and (*c*) because the reasoning of the German opinions applies as forcibly to the facts here as to the facts before the German courts.

V. Several of the points made in respondent's answer to show the animus of Messrs. Remington and Sholes at the time of the incorporation of the Remington-Sholes Typewriter Company may be pertinent and to such we make reply:

(A) The assertion on p. 6 of respondent's answer that "neither the Remingtons nor Sholes had any idea of engaging in the manufacture of typewriting machines" is plainly against the record, as Mr. Sholes, appearing as a witness on behalf of respondent, when asked as to the expenditure of moneys contributed by Franklin Remington, testified (Rec. 413):

> "Q. 138. And aside from that which they invested at first in the purchase of the three-quarters interest in the model and inventions, &c., what was

the balance of the money making up the $15,000 expended for? A. To keep myself, a man we had on a salary, some changes we had made in the model, traveling expenses, shop rent, attorney's fees, &c.

"Q. 139. You speak of having expended money in traveling fees. What traveling fees do you refer to; please state? A. Well, we traveled in the interest of promoting the machine.

"Q. 140. Please state just what you mean by promoting the machine? A. Endeavoring to interest capital for the purpose of manufacturing the machine."

(B) As refuting the statement on p. 9 of respondent's answer as to the absence of material changes in the original Sholes model we call attention to the following testimony of Mr. Sholes (Rec. 428):

"X-Q. 231. State whether or not you discussed with Mr. Franklin Remington any changes or modifications that were made in the model machine after he became interested with you; I mean did you and he advise together in regard to such matters? A. I never took any steps in connection with our model machine, or the business thereof, without first consulting Mr. Franklin Remington.

"X-Q. 232. You may state what opinion Mr. Franklin Remington was accustomed to express to you and to others in your presence in regard to the value and superiority of your model machine, if any? A. We naturally thought, we had the best machine that had ever been built, and I don't think we ever failed to talk it."

(C) The attempt to belittle the reputation of the father of Franklin Remington and the father of Zalmon G. Sholes by asserting (Resp. Ans., p. 10) that neither of these "were ever *personally* engaged in the manufacture or sale of typewriting machines" is at best but a quibble and is not sustained by the record. Mr. Rem-

ington's father was president of the corporation E. Remington & Sons (Rec. 702). Mr. Sholes' father was a recognized pioneer inventor of typewriting machines of whom "Appleton's Cyclopædia of American Biography" says:

> "He has interested himself in inventions, the most important of which is his typewriting machine that was introduced through the firm of E. Remington & Sons. . . . In 1873 this invention passed into the hands of the Remingtons for manufacture, since which time many minor improvements have been added to it increasing its usefulness."

Mr. Z. G. Sholes, when testifying in this cause was an employee of respondent's president, Mr. Seamans (Rec. 442). When asked as to the reason for the adoption of the name "Remington-Sholes" he repeatedly answered (Rec. 424):

> "I thought it (*i. e.*, the name Remington-Sholes) a good combination because my father was the originator of what is known as the Remington machine and Mr. Remington's father had been the manufacturer."

VI. The statement on p. 11 of respondent's answer that in 1897 after "the designation 'Remington-Sholes' was abbreviated to 'Rem-Sho' the name 'Remington-Sholes' was always used on the machine in connection with the abbreviation" is not true in fact, as the record shows that although the machines of the old Remington-Sholes Typewriter Company bore the name "Remington-Sholes, Chicago," still after the name "Rem-Sho" was adopted the only marks appearing upon the machine were "REM-SHO" and "REMINGTON-SHOLES COMPANY, Mfrs. Chicago." (Rec. 1104, 1106 and 1458.)

VII. The utterly misleading character of the quotations (Resp. Ans., p. 13) from the letter of instructions

of the Remington-Sholes Company to its agents will best appear from an inspection of such letter (Rec. 875) and from the fact that such instructions were specifically designed to indicate to the salesman how he was to present the mechanical construction of the Rem-Sho to an intending purchaser and particularly how to show its superiority over the "Remington." Thus, for example, the letter says:

> "If Remington machine is handy call customer's attention to looseness of construction of the Remington carriage and compare it with the rigidity of the Rem-Sho."

VIII. The assertion on p. 25 of Respondent's Answer that the advertisements of the independent foreign dealers are "relevant as showing or tending to show the effect upon respondent's trade of putting the machines of the Remington-Sholes Company into the markets," etc., is without force. The record shows (Rec. 662) that the foreign advertisers purchased their machines outright from the independent German company which under the decisions of the German courts had a lawful right to use the name Remington-Sholes. These advertisements give no intimation as to the effect abroad of marking machines with the words "REMINGTON-SHOLES COMPANY, Mfrs. CHICAGO" and with the trade-mark "REM-SHO." If the foreign dealers were guilty of wrong doing, the remedy is by action against them. A court of equity in this country will not destroy a right existing here as a means of correcting an abuse of such right by strangers abroad.

IX. The statement on page 11 of respondent's answer regarding the change in the coloring and ornamentation of petitioners' machine is misleading. The record shows that the reason why the ornamental design and

bronzing of the machine (which was continued for six years, and was not abandoned until *nearly two years after this suit was brought*), were changed to the conventional black enamel frame common to nearly all other typewriting machines, was because the bronzing was found not durable. (Rec. 1421, 1422.)

X. The statement on page 18 of respondent's answer to the effect that Mr. Franklin Remington has, since the decision of the Circuit Court, "abandoned the typewriter business" is not only a matter *de hors* the record, but counsel for respondent was advised as to the true situation of Mr. Franklin Remington with respect to the Fay-Sholes Company by the following letter:

"CHICAGO, Nov. 5, 1903.

"JOSIAH MCROBERTS, ESQ.,
"Monadnock Building,
"Chicago.

"*Dear Sir:* Referring to the request made through you by Mr. H. D. Donnelly with respect to a stipulation in regard to the change of the corporate name of the Remington-Sholes Co., and with regard to Mr. Franklin Remington, we beg to say that we do not deem such a stipulation necessary to the proper determination of the cause by the U. S. Supreme Court.

"The petition for *certiorari* now on file in the U. S. Supreme Court sets forth fully (see p. 11) with respect to the change of corporate name. Mr. Franklin Remington is still a stockholder and the Vice-President and a director of the Company and, as we are informed, his large experience in connection with the manufacture and sale of typewriters is relied upon in determining the policy of the Co., particularly with respect to foreign trade. We understand from Mr. Fay that Mr. Remington is exercising constant supervision with respect to the Eastern offices of the Co., conferring with and directing the managers thereof in all important matters and promoting, so far as possible, the business of the Co. No stipulation as to the fact that Mr. Remington has resigned the position of

general manager would be adequate without its showing that such resignation was due in great part, at least, to the decree of His Honor Judge Wheeler and the stigma that such decree placed upon Mr. Remington and the widespread use that was made of such decree particularly with respect to Mr. Remington by the agents of Wyckoff, Seamans & Benedict. But even with such showing, Mr. Remington's present relations to the Co. can have no bearing on the issues of the case before the U. S. Supreme Coprt however much it might tend to divert the mind of the Court from the real matters presented for its determination.

"Yours very truly,

"PEIRCE & FISHER."

Moreover, the affidavits filed by respondent to show that Mr. Remington has abandoned the typewriter business do not support such assertion, but, on the contrary, the affidavit of Mr. Mason (Resp. Ans., p. 43) shows that Mr. Remington is still vice-president of the Fay-Sholes Company.

XI. It does not seem necessary to argue at this time whether your petitioners have or have not a right to an appeal to this court, in the light of the fact that the bill of complaint asserts infringement of a registered trade-mark. We understand that the question of such right of appeal is awaiting the determination of this court in the recently argued Warner case. The fact remains that in at least several cases this court has taken, upon petitions for certiorari, cases in which registered trade-marks were involved. (*Saxlehner* v. *Eisner & Mendelsohn Co.*, 179 U. S., 19; *Holzapfels Co.* v. *Rahtjen's Co.*, 181 U. S., 1.)

AUSTEN G. FOX,
JAMES H. PEIRCE,
GEORGE P. FISHER, JR.,
WILLIAM HENRY DENNIS.

## Order.

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

Tuesday, July 1, 1902.

Present HON. CHRISTIAN C. KOHLSAAT, District Judge.

26,032. Wyckoff, Seamans and Bendict *vs.* Remington-Sholes Co. } In Chancery.

Now come the parties by their solicitors and now comes on to be heard the motion of the defendants to stay further procedings herein until the determination of a suit pending in the United States Circuit Court of Appeals for the Second Circuit. And the court having considered said motion, and counsel having stipulated in open court that the questions involved in said cause, pending in the Second Circuit, are in the main like those involved in this case, it is ordered that further proceedings herein be stayed until the said United States Circuit Court of Appeals for the Second Circuit shall have decided the same, or if appealed or certified, to the Supreme Court of the United States, then such stay of proceedings shall continue until said last named court shall have announced its findings therein; but if said cause shall not be certified or appealed to the Supreme Court of the United States from said Second Circuit, then this stay of proceedings shall cease and terminate with leave to complainant to proceed at once to an accounting, if the finding of said court shall be in its favor.

NORTHERN DISTRICT OF ILLINOIS, } ss:
*Northern Division,* }

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the order entered of record in said court on the first day of July, A. D. 1902, in the cause wherein Wyckoff, Seamans & Benedict is the complainant and Remington-Sholes Co. the defendant, as the same appears from the original records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 16th day of November, A. D. 1903.

[SEAL.] MARSHALL E. SAMPSELL, *Clerk.*

IN THE

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

WYCKOFF, SEAMANS & BENEDICT,
Petitioner,

vs.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,
Respondents.

## BRIEF FOR RESPONDENTS.

The United States Circuit Court of Appeals for the Second Circuit decided (Wallace, J., dissenting) that the petitioner, Wyckoff, Seamans & Benedict, was entitled to a decree as to the name "Remington," but unanimously declared that the arbitrary name "Rem-Sho" was not "sufficiently like Remington to be of itself a reasonable cause of confusion."

The sole purpose of the present petition is to secure a reversal of this decision of the Court of Appeals as to the name "Rem-Sho."

We submit that this petition should be denied and make answer to the reasons pressed upon this court in support of the petition in the order in which they are there presented:

(*a*) The only "conflict of decision" in this case, so far as the name "Rem-Sho" is concerned, results from the unanimous reversal of the trial judge by the Court of Appeals upon a question of fact. This is not the conflict of decision that inclines this court to the extraordinary

remedy of a writ of *certiorari*. (*Forsyth* v. *Hammond*, 166 U. S., 506.)

(*b*) The decision of the Circuit Court of Appeals as to the name "Rem-Sho" must be binding upon the present petitioner in the Illinois case and the decision of this court upon the question whether the use of the name "Rem-Sho" is in violation of the petitioner's rights is not needed "to prevent costly litigation and settle all questions of controversy between the parties to this action."

(*c*) This court has repeatedly held that "the peculiar gravity and general importance" of the question presented must determine whether a writ of *certiorari* shall or shall not issue. (*American Construction Co.* v. *Jacksonville R. R.*, 148 U. S., 372; Lau Ow Bew's case, 141 U. S., 583; *In re* Woods, 143 U. S., 202.) The amount of labor involved in the consideration of the question is of no moment.

(*d*) Whether or not the Court of Appeals erred in holding that the name "Rem-Sho" was not sufficiently like "Remington" to be likely to cause confusion, is immaterial, because, to use the language of this court in *American Construction Co.* v. *Jacksonville R. R.*, *supra*, "the error was one in the judicial determination of a case within the jurisdiction of that court, and neither so important in its immediate effect, nor so far-reaching in its consequences, as to warrant this court in undertaking to control the cause at this stage of the proceedings."

We submit that the petition should be denied.

AUSTEN G. FOX,
JAMES H. PEIRCE,
GEORGE P. FISHER, JR.,
WILLIAM H. DENNIS,
*Attorneys and of Counsel for Respondents.*

# Supreme Court of the United States

OCTOBER TERM, A. D. 1904.

**No. 130.**

**HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY, Petitioners,**

vs.

**WYCKOFF, SEAMANS & BENEDICT, Respondent.**

## BRIEF AND ARGUMENT FOR PETITIONERS.

(WITH APPENDIX OF GERMAN DECISIONS AS TO NAME "REMINGTON-SHOLES.")

## SYNOPTICAL INDEX.

**Statement of Facts.**—First of modern typewriting machines invented chiefly by C. L. Sholes and manufactured by E. Remington & Sons. World-wide reputation of Remingtons (as manufacturers of fire arms, sewing machines, etc.), before the advent of the typewriter, the admitted reason for giving the names "Remington" and "Remington Standard" to complainant's machine. Typewriter branch of business transferred in 1886 by E. Remington & Sons corporation, together with name "Standard Remington Typewriter," the right being reserved to re-engage in the business after ten years. . . . . 3

**Identifying Marks of Complainant's Machine.**—Complainant's machine marked with name "Remington," with large "Red Seal" trade-mark, with name and address "Remington Standard Typewriter, Manufactured by Wyckoff, Seamans & Benedict, Ilion, N. Y.," etc. . . . . 5

**History of Remington-Sholes Co. and its Predecessor, the Remington-Sholes Typewriter Co.**—Z. G. Sholes (son of C. L. Sholes, the pioneer typewriter inventor), having invented a typewriting machine, organized Wisconsin corporation, "The Z. G. Sholes Company," to manufacture same. Stock of said company never issued and no machine ever made by it. Z. G. Sholes met Franklin and Carver Remington, sons of former president of E. Remington & Sons corporation. The Remingtons bought three-quarters interest in Sholes' invention. They acquired interest in the Z. G. Sholes Company to cancel its license under the Sholes inventions and surrender charter. Franklin Remington gave his entire time to the improvement and exploiting of the Sholes machine, furnishing all capital ($15,000). All changes in the Sholes machine subject to Remington's approval. Name of machine thereafter

changed from "Z. G. Sholes" to the "Remington-Sholes." Remington and Sholes interested capital to manufacture their machine and "Remington-Sholes Typewriter Company" formed. Its capital stock taken mainly by the Remingtons and Sholes. Business of corporation managed entirely by Franklin Remington as general manager and Z. G. Sholes as superintendent, during first year or more. Dissolution of Remington-Sholes Typewriter Company in fall of 1896 and business taken over by Mr. Fay pending reorganization. Remington-Sholes Company succeeded to business in April, 1897. Remington retained one hundred and fifty shares of stock (representing his cash investment) and continued general manager. . . . . 6

**Distinguishing Marks of Defendant's Machine**—Typewriters differed radically in appearance from all others and were at first marked "Remington-Sholes, Chicago." Machines of new company marked with words "Remington-Sholes Company, Mfrs., Chicago," and with registered trade-mark "Rem-Sho." Defendant's principal at outset adopted sign "Not the Remington Standard Typewriter" and invariably instructed salesmen and dealers to guard against possible confusion and published in all catalogues the fact that there is no connection with Remington Standard typewriter. 10

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A." Defendant's cautionary notice addressed to the ultimate purchaser. Where a complainant's machine is uniformly marked with the name and address, the marking of a defendant's machine with his name and address universally recognized as an effective means of distinction. Defendant has more than complied with the most exact requirements in distinguishing its machine from complainant's. . . . . 35

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# Supreme Court of the United States

OCTOBER TERM, A. D. 1904.

**No. 130.**

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**HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY, Petitioners,**

**vs.**

**WYCKOFF, SEAMANS & BENEDICT, Respondent.**

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## BRIEF AND ARGUMENT FOR PETITIONERS.

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This cause comes before this court on petition and cross-petition for writ of *certiorari* to the United States Circuit Court of Appeals for the Second Circuit to review a judgment which in terms reversed a judgment of the Circuit Court for the District of Vermont.

The bill of complaint charges infringement of the registered trade-marks "REMINGTON" and "REMINGTON STANDARD" (R. 6), and unfair competition in trade.

The Howe Scale Company, at the time the suit was brought, was placing upon the market typewriting machines manufactured by the Remington-Sholes Company of Chicago, Illinois, and bearing the name "REM-SHO" and

the name and address of the manufacturer, viz., "REMINGTON-SHOLES COMPANY, MFRS., CHICAGO," and it is against this use of the names "REM-SHO" and "REMINGTON-SHOLES COMPANY" that the complaint is particularly directed.

The Circuit Court sustained the bill so far as granting the prayer for an injunction, but denied the prayer for an accounting. On appeal, the Circuit Court of Appeals held defendant entitled to use the name Rem-Sho, but, by a divided court, technically reversed the decision of the lower court and remanded the cause with instructions to decree in favor of the complainant only as to the name "Remington." From this decision of the Circuit Court of Appeals, Wallace, J., dissented, holding that the decree of the lower court should be reversed with instructions to dismiss the bill of complaint. After the issuance of the mandate of the Circuit Court of Appeals, the Circuit Court on June 23, A. D. 1903, entered a final decree in which it was decreed *inter alia* that the defendant, the Howe Scale Company of 1886, and all others acting in privity with it, should be enjoined from in any manner whatsoever making use of the word "REMINGTON" as the whole or as a part of any name or designation whatsoever, which should be marked upon or applied to typewriting machines, and that complainant recover the costs of suit.

The Remington-Sholes Company, by whom the defense of this suit has been managed, in obedience to the original decree of the Circuit Court ceased to mark its typewriting machines with the words "REMINGTON-SHOLES COMPANY, MFRS., CHICAGO" and with its registered trade-mark "REM-SHO," and changed its corporate name from "Remington-Sholes Company" to "Fay-

Sholes Company" in keeping with the laws of the State of Illinois.*

The petition for writ of *certiorari* was presented by the Howe Scale Company and by the Fay-Sholes Company (formerly named Remington-Sholes Company) to secure the reversal of the decree of the Circuit Court of Appeals for the Second Circuit in so far as it decreed against the use of the name "Remington-Sholes" and "Remington-Sholes Company" in connection with defendant's machines; and the cross-petition of the complainant, Wyckoff, Seamans & Benedict was presented to secure the reversal of the decree of the Circuit Court of Appeals in so far as that decree affirmed defendant's right to use the name "REM-SHO" upon its machines.

## Statement of Case.

**Complainant and its Predecessors.**—For some years prior to 1860 E. Remington and his sons, Philo, Samuel and Eliphalet, were engaged at Ilion, N. Y., in the manufacture of fire arms, both sporting and military, under the firm name of E. Remington & Sons. After the father's death in 1863, the sons carried on the partnership business until January, 1865, when they organized the corporation, E. Remington & Sons, under the laws of the State of New York.

As early as 1866 E. Remington & Sons produced a breech-loading rifle that was sold in immense quantities throughout the world, the output of the works at times reaching as high as 1,000 finished guns per day. (R.

* Counsel for complainant has urged that in view of this change of name the questions at issue have become largely "academic." We assume, however, that this court will deal with the *status* existing prior to the injunction decree that caused the change of name.

40.) This rifle was known and is today known as "The Remington." (R. 39.) The "Remington Sewing Machine," agricultural implements and other machines were also manufactured and sold very extensively (R. 80), offices being established for their sale in most of the principal cities of the United States. The plant of this corporation was one of the largest in the world and the name "Remington" became known the world over prior to the advent of the typewriter.

In 1873 E. Remington & Sons began the manufacture of a typewriting machine, the most important features of which were invented and patented by Christopher Latham Sholes. (R. 208.) When first placed upon the market this machine, being the pioneer writing machine, was designated and known simply as "The Typewriter." Later and for a very brief period it was called "The Sholes & Glidden Typewriter," although never known to any considerable extent by that name (R. 55 and 64); but about 1880, and for the admitted purpose of gaining the benefit of the great reputation of E. Remington & Sons in other lines of manufacture, the names "Remington" and "Remington Standard" were adopted and have since been continuously used. (R. 4.)

The history of the adoption of the name "Remington" in connection with the typewriter is thus given by complainant's witness, Mr. Barron (R. 206):

> "About 1880 the 'Caligraph' was put on the market by the American Writing Machine Company. When Mr. Yost first talked of putting the 'Caligraph' on the market, he and James Densmore (the parties who had brought the original model machine to E. Remington & Sons) had a conversation at which I was present and they decided that the name of the Sholes & Glidden typewriter should be called the 'Remington' in contradistinction to the 'Cali-

graph' for the reason that **the name Remington was known the world over owing to their building guns for foreign governments, building sewing machines, and having one of the largest manufacturing works in the world.** . . . The conversation was about, I think, the latter part of 1877 or in the spring of 1878."

On March 22, 1886, the typewriter branch of the business of E. Remington & Sons was sold to Messrs. Wyckoff, Seamans & Benedict, and at the time of such sale there was transferred also the exclusive right to the name "STANDARD REMINGTON TYPEWRITER," *by which name, as the assignment states* (R. 717), *the machines were generally known. But this assignment expressly reserved to E. Remington & Sons the right to re-engage in the manufacture and sale of typewriters at any time after ten years from its date* (R. 720.), this reservation obviously carrying with it the right to resume the use of their name upon typewriting machines in case they again embarked in such enterprise.*

The fire-arms branch of the Remington Corporation was later transferred to the Remington Arms Company that continues to manufacture the "Remington Rifle," the "Remington Shot Gun," the "Remington Bicycle," etc.

**Identifying Marks of Complainant's Machine.**— For many years past complainant's typewriting machines have been marked conspicuously and invariably with the name "REMINGTON" and with the large "RED SEAL" trade-mark upon the paper table and frame (R. 1487), and with the name and address "REMINGTON STANDARD TYPEWRITER MANUFACTURED BY WYCKOFF, SEAMANS & BENEDICT, ILION,

*Italics and display type for emphasis are not to be understood as appearing in the original of any matter quoted.

N. Y., U. S. A." on the cross-bar in front of the keyboard, and with the words and figures "No. 6 REMINGTON STANDARD TYPEWRITER No. 6" on the front of the base, and with the words "This machine is protected by 67 American and foreign patents" on the back. (R. 103, 104.)

The names "REMINGTON" and "REMINGTON STANDARD" and the "RED SEAL" have all been registered in the Patent Office as the trade-marks of complainant's machine, it being asserted that they have been used since the year 1880. (R. 82 and 1487.)

**Genesis of the Remington-Sholes Company.**—In 1892 Zalmon G. Sholes, a son of Christopher Latham Sholes (the pioneer typewriter inventor), invented a typewriting machine, but being without capital he sought to interest others in its manufacture. In the early part of 1893, The Z. G. Sholes Company was organized under the laws of Wisconsin for this purpose by persons strangers to this litigation and to those connected therewith. (R. 398.) THE STOCK OF SUCH COMPANY WAS NEVER ISSUED, AND NO MACHINE WAS EVER MADE OR SOLD BY IT. (R. 399.)* After various failures to secure capital, Mr. Sholes, in the summer of 1893, met Franklin and Carver Remington (R. 403), sons of Samuel Remington, formerly president of the E. Remington & Sons corporation, and interested them in his new machine. They bought a three-fourths interest in Sholes' inventions from parties to whom he had previously sold, and in order to extinguish the exclusive license to practice

* This court will therefore perceive the error of fact in the opinion of Wheeler, J., in stating that the Z. G. Sholes Company was an Illinois corporation, and that the name of such corporation was changed to Remington-Sholes Typewriter Company.

said inventions theretofore vested in the Z. G. Sholes Company they bought a like interest in the stock of said company, making a written agreement with Sholes (R. 826) that *"no other, further or different business of any kind or nature shall be transacted by said corporation or in its behalf except that the same shall be dissolved,"* etc. Upon acquiring their interest in the Sholes machine, the Remingtons and Sholes endeavored to procure the capital necessary for its manufacture. (R. 403 and 404.)

At the outset both of the Remingtons gave equal attention to the matter, but after the first month Franklin Remington gave his entire time to the promotion of the enterprise (R. 428), and no steps were thereafter taken by Sholes in connection with the machine without consulting with Franklin Remington. (R. 429.) It was Franklin Remington who supplied the money for salaries, for attorneys' fees, for shop rent, for changes in the machine, etc., to the extent of some six or seven thousand dollars beyond his original investment of eight or nine thousand. (R. 413, 430.) After they had labored together for several months, Sholes, without the knowledge of the Remingtons, changed the name of the reconstructed machine from "The Z. G. Sholes" to "The Remington-Sholes." (R. 427.)

As the successful manufacture and sale of their typewriting machine required capital far beyond their slender means, the Remingtons and Sholes sought at various points to enlist others in the enterprise. After repeated failures they at length induced Mr. Charles N. Fay and Mr. Franklin Head of Chicago to furnish the requisite funds to manufacture this new-born Remington-Sholes machine. Most of the typewriting machines upon the market bear the names of the inventors or manufacturers, and are the output of corporations similarly named. In

keeping with this custom the name "Remington-Sholes" was retained for the machine, and the corporation organized in the spring of 1894 for its manufacture was designated the "Remington-Sholes Typewriter Company."

The capital stock of this company (which was afterwards increased) consisted at first of 1,500 shares of the par value of $100 each, and these shares were subscribed for as follows, viz.: Z. G. Sholes, 374 shares; F. Remington, 561 shares; C. Remington, 562 shares, and Norman Hapgood, C. H. Hamill and L. Thompson, one share each. Upon the completion of its organization, the following officers were chosen, viz.: Mr. C. N. Fay, president; Mr. Franklin Head, vice-president; Mr. Franklin Remington, general manager; Mr. Z. G. Sholes, superintendent (R. 434), and Franklin Remington, Carver Remington, Z. G. Sholes and Messrs. Fay and Head, directors. (R. 409.) The company at once purchased the necessary tools and machinery, and its first typewriting machines were placed upon the market in December, 1894. **From the outset and during the first year of the existence of this company its business was managed entirely by Franklin Remington and Z. G. Sholes** (R. 434, 429 and 1105), Mr. Fay being absent most of the time in Europe and elsewhere.

In preparing the machine for the market, modifications and changes were made by Sholes, and these were invariably talked over with Remington and were subject to his approval. (R. 434.) From December, 1894, until it ceased doing business in the fall of 1896, the Remington-Sholes Typewriter Company widely advertised its machines as the "Remington-Sholes Typewriter" (R. 437), and established agencies throughout different parts of this country. During the first year it sold about 1,000

machines (R. 438), and up to December, 1896, about 3,000 or 3,500. (R. 438.)

In the fall of 1896 the Remington-Sholes Typewriter Company had run so in debt that it became necessary to take stens to meet its obligations, and on December 14, 1896, a meeting of the stockholders was held for such purpose. At this meeting 2,356 shares of stock were represented, Mr. Sholes, Mr. F. Remington, Mr. Fay and Mr. Head, with other stockholders, being present and voting. Resolutions were then passed, instructing the secretary to sell at public auction the property and assets of the company, the buyer to have the privilege of using all or any part of the company's corporate name. (R. 839.) On December 19, 1896, in pursuance of such stockholders' resolutions, C. N. Fay purchased in his own name (but as trustee for himself and other stockholders) the whole of the assets of said company, together with its good-will, the exclusive right to use its trade-marks, trade-name, etc., and for several months thereafter (R. 410), and until a reorganization could be effected, carried on the business at the factory formerly occupied by said Remington-Sholes Typewriter Company. (R. 354.)

The charter of the Remington-Sholes Typewriter Company was surrendered in April, 1897. In the same month the Remington-Sholes Company was incorporated under the laws of Illinois, and purchased all the assets, good-will, trade-marks, trade-names, etc., theretofore belonging to said Fay and to said Remington-Sholes Typewriter Company. Since its organization said new company has continued at the same factory and through the same instrumentalities as before used by the old company and by Fay to manufacture and sell its typewriters.

The organization of the Remington-Sholes Company was in purpose and in effect a reorganization of the old

company (R. 410; 431), the plan being to divide the common stock of the new company amongst the stockholders in keeping with the amounts of cash actually invested by them in the old company. The allotment of 150 shares of stock to Franklin Remington was admittedly in keeping with such plan, as he had invested $15,000 cash in the old company. (R. 430; 434.) Z. G. Sholes received no stock in the new company, because, by sales of his stock in the old company, he had already been reimbursed for his expenditures in connection with his original machine. (R. 431-432.)

**Distinguishing Marks of Defendant's Machine.**—Every machine put upon the market by the old Remington-Sholes Typewriter Company, and its successors, up to the middle of the year 1900 (R. 555) (nearly two years *after* the filing of the bill of complaint) had a highly ornamental, bronzed frame of very unique design. This frame both as to shape and coloring was a radical departure from the conventional plain black enamel frames invariably used upon complainant's and other typewriting machines. The machines made and sold by the defunct Remington-Sholes Typewriter Company were conspicuously marked with the words "REMINGTON-SHOLES, CHICAGO." While Mr. Fay conducted the business in his own name pending the reorganization, the same marks were retained. When the new company took possession of the plant and business, the trade-mark "REM-SHO" was adopted and from that time all of its machines have been marked also upon the cross-bars with the words "REMINGTON-SHOLES COMPANY, MFRS., CHICAGO," The name "REM-SHO" was registered as a trade-mark October 19, 1897.

In June, 1894, complainant protested against the use

of the names "Remington" or "Sholes," "together or singly." (R. 805.) In response to this and other notifications Mr. Remington wrote (R. 1444):

> "The writer and Mr. Sholes invested a great deal of time and money in developing a typewriting machine, fit to compete with your own and other excellent machines already in the market, before organizing this company and inducing others to join us in the business. As a matter of course, at the outset and continuously since, we and our associates have consulted eminent counsel here and in the East, as to both trade-mark and patents, and have, in their judgment and our own, full moral and legal right to enter the old and substantially open field of typewriter manufacture as we have done. We have carefully respected valid patents, and in using our own names, the right to which we had never alienated, we have scrupulously avoided all deception of the public, both in the superficial appearance and construction of our machine, and in all our printed and verbal representations regarding it."

From the very beginning of its business and even before actually placing its machines upon the market, the Remington-Sholes Typewriter Company advertised conspicuously and in divers ways the fact that its machine "was not the Remington Standard Typewriter" and that it had no connection with complainant or its machine, and the salesman and dealers were invariably instructed to guard carefully against all danger of possible confusion between the two companies and their respective machines. (See, for example, R. 439; 1258; 306; 440; 1041; 1142; 1169; 1262; 1278; 1309; 1322; 1331.) All of the catalogues circulated by defendant (and these catalogues have been distributed broadcast throughout the country) contained in connection with the history of defendant's machine the following statement:

> **"We state then emphatically that this com-**

**pany has no connection whatever with that well known and excellent machine, the Remington Standard Typewriter, and caution all possible customers against confusing the 'Rem-Sho' with that machine or any other."**

**German Litigation.**—No litigation was brought by complainant against this defendant or its principal until the filing of this suit in September, 1898, more than four years after the protest of June, 1894. But while the machine manufactured by the old Remington-Sholes Typewriter Company and marked with the words "Remington-Sholes, Chicago," were being sold in Germany by one Henry Newald, a suit was brought there against him by complainant's agents Glogowski & Co. (R. 219), by whom the name "Remington" had been registered in the German Patent Office as a trade-mark for typewriting machines. **The case went from the lower courts to the German Imperial Supreme Court and it was there held that in view of the history of the Remington-Sholes Typewriter Company the name "Remington-Sholes" could be properly and lawfully used upon machines of its manufacture.** (R. 29 and 1433.)*

## Errors in the Decree of the Circuit Court.

The findings of the Circuit Court in paragraphs 1 and 2 of its decree (R. 1501) are believed to be in error because misleading. It is doubtless true, as admitted by defendant's answer, that to a large extent complainant's machine has become known by the single name "Remington," but it is not true in fact that by that name *alone* it has become universally known, designated or identified.

* A translation of the opinions of the German Courts follows at the end of this brief.

The bill of complaint alleges (R. 4, 6, and elsewhere) that complainant's machine is "known and distinguished in the trade generally and by all purchasers and intending purchasers and users of typewriting machines by said trade-marks and trade designations 'REMINGTON' and 'REMINGTON STANDARD.'" Again, in the assignment from E. Remington & Sons it is stated that the machine is known and designated "more generally as the "STANDARD REMINGTON TYPEWRITER" (R. 717), and complainant's own witnesses repeatedly designate the machine as the "REMINGTON STANDARD." (See *e. g.*, R. 158; 347; 375; 468; 480; 313, etc.) The fact also that the name "REMINGTON STANDARD" and the "RED SEAL" trade-mark and the manufacturer's name and address have been invariably marked upon all machines of complainant and its predecessors for more than twenty years must reasonably raise the presumption that the public has in a measure at least come to recognize these (as well as the word "Remington") as distinguishing marks of such machines.

Yet in the face of these facts and of the further fact that the attempt to prove by *selected* advertisements the general use of the name "Remington" alone was exposed on cross-examination (R. 223), counsel apparently succeeded in misleading the circuit court into the finding that the name "Remington" was the *sole* designation by which the public identified complainant's machine.

The finding of paragraph 5 of the decree that defendant has been guilty of a fraudulent invasion of complainant's rights; the injunction decreed in paragraphs 8 and 9, and the order awarding costs to complainant in paragraph 10, being in disregard of the facts of the case and of the law applicable thereto, constituted the main basis of the appeal from the Circuit Court.

A further specific ground of the appeal (R. 1511-1513) was the error of the Circuit Court in denying defendant's motion to suppress a mass of testimony and exhibits introduced on behalf of complainant, said motion appearing at R. 1440-1441.

The errors of fact occurring in the opinion of his Honor, Judge Wheeler, are adverted to in subsequent parts of this brief.

## Errors Noted by Petition for Certiorari.

The order of the Circuit Court of Appeals (R. 1534), conforming to the majority opinion of such court, is as follows:

> "On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said Circuit Court be and it hereby is reversed without costs, and cause remanded with instructions to decree in favor of complainant only as to the name 'Remington.'"

This decree is believed to be in error in the following respects:

*First*: In that, in disregard of the facts and of the law of the case, it forbids the use by defendant of the name "Remington" in the corporate name of its principal, the Remington-Sholes Company.

*Second*: In that it fails to order the dismissal of the bill and to tax complainant with the costs of the suit.

*Third*: It was also manifest error for the Court of Appeals to disregard, as it did, defendant's motion to suppress testimony, as such matter was properly presented to that court by the appeal.*

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*The testimony sought to be suppressed related in part to certain hearsay depositions, but more especially to a mass of exhibits showing

## Error Alleged by Cross Petition for Certiorari.

The cross petition for certiorari raises the single question as to whether or not the Court of Appeals erred in refusing to enjoin defendant from using the name REM-SHO in connection with its typewriting machines.

## BRIEF OF ARGUMENT.

I.

A personal name, such as the name "Remington," is incapable of exclusive appropriation, and its registration in the Patent Office cannot render it a valid trade-mark.

*Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169.
*Brown Chemical Co.* v. *Myer*, 139 U. S., 540.
*McLean* v. *Fleming*, 96 U. S., 245.
*Columbia Mill Co.* v. *Alcorn*, 150 U. S., 460.
*Harson* v. *Halkyard* (Sup. Ct. R. Is.), 46 At. Rep., 271.
*Jamieson & Co.* v. *Jamieson & Co.*, 15 R. P. C., 169.
*Elgin National Watch Co.* v. *Illinois Watch Case Co.*, 179 U. S., 665.
*Sarrazin* v. *Irby Co.*, 93 Fed. Rep., 625 (C.C.A.).
*Brower* v. *Boulton*, 52 Fed. Rep., 389.

advertisements in foreign countries by admittedly independent dealers who purchased Rem-Sho machines from an independent German Company. This testimony is considered in a subsequent part of this argument under the head of "Foreign advertisements and acts by persons over whom defendant and its principal had no control."

II.

"A man's name is his own property and he has the same right to its use and enjoyment as he has to that of any other species of property," the only restriction imposed by this court upon the use of a personal name being that it shall be "a reasonable, honest and fair exercise of such right."

*Brown Chemical Co.* v. *Myer, et al., supra.*
*McLean* v. *Fleming, supra.*
*Singer Mfg. Co.* v. *June Mfg. Co., supra.*

III.

To a personal name (or like generic name) no secondary signification can attach that will diminish the right of any one bearing such name to use it in every honest way and for every legitimate purpose; and where a personal or generic name has acquired a secondary signification, the most that can be required of a person having a right to use such name is that he shall accompany its use "with such indications as to show that the thing manufactured is the work of the one making it."

*Singer Mfg. Co.* v. *June Mfg. Co., supra.*
*Holzapfel Co.* v. *Rahtjens Co.*, 183 U. S., 1.
*Baker* v. *Baker*, 115 Fed. Rep., 297.
*Duryea et al.* v. *National Starch Manfg. Co.*, 79 Fed. Rep., 651.

IV.

In cases like that at bar, the ground of relief is the injury to a complainant by the passing off of defendant's wares for those of complainant, and where a complainant invariably marks his wares with his name and address (*e. g.*, Wyckoff, Seamans & Benedict, Ilion, N. Y.) and

with a designating mark (*e. g.*, "REMINGTON STANDARD TYPEWRITER"), the fact that a defendant has invariably marked *his* wares with his name and address (*e. g.*, Remington-Sholes Company, Mfrs. Chicago) and with a different distinctive mark (*e. g.*, "REM-SHO"), is most persuasive of the absence of any intent to pass off his wares as and for complainant's.

*Goodyear Rubber Co.* v. *Goodyear Rubber Mfg. Co.*, 128 U. S., 598.

*Elgin National Watch Co.* v. *Ills. Watch Case Co., supra.*

*Singer Mfg. Co.* v. *June Mfg. Co., supra.*

*Holzapfel Co.* v. *Rahtjens Co., supra.*

*Corbin* v. *Gould*, 153 U. S., 328.

*Coats* v. *Merrick Thread Co.*, 149 U. S., 562.

*Lorillard* v. *Peper*, 86 Fed. Rep., 956.

*Kahn et al.* v. *Diamond Steel Co.*, 89 Fed. Rep., 706.

*Proctor & Gamble Co.* v. *Globe Ref. Co.*, 92 Fed. Rep., 357.

*Dadirrian* v. *Yacubian et al.*, 98 Fed. Rep., 872.

Sebastian on Trade Marks (4th Ed.), 123.

## V.

The issuance of cautionary circulars (such as defendant has widely distributed to call attention to the fact that it "has no connection whatever with that well-known and excellent machine, the Remington Standard Typewriter, etc.") is recognized by the courts as clearly repugnant to any purpose to palm off defendant's wares for complainant's.

*Goodyear Rubber Co.* v. *Goodyear Rubber Mfg. Co., supra.*

*Singer Mfg. Co.* v. *June Mfg. Co., supra.*

*Hazelton Boiler Co.* v. *Hazelton Tripod Boiler Co.*, 142 Ill. Sup., 494.

*Genesea Salt Co.* v. *Burnap*, 73 Fed. Rep., 818.

VI.

The decisions are uniform in holding that where the name or mark adopted by a defendant is sufficiently different from that employed by a complainant to enable the ordinary purchaser, using reasonable care, to distinguish defendant's from complainant's goods, no injunction will issue. The name "Sholes" amply differentiates the compound names "Remington-Sholes" and "Remington-Sholes Company" from the single name "Remington."

*Liggett & Myers Co.* v. *Finzer*, 128 U. S., 182.

*Proctor & Gamble Co.* v. *Globe Ref. Co.*, *supra.*

*Coats* v. *Merrick Thread Co.*, *supra.*

*Meneely* v. *Meneely*, 62 N. Y., 427.

*Corbin* v. *Gould*, *supra.*

*Lorillard* v. *Peper*, *supra.*

VII.

The courts have uniformly recognized that a man's use of his name in a firm name is a reasonable, honest and legitimate use.

*Meneely* v. *Meneely*, *supra.*

*Same* v. *Same*, 1 Hun., 367.

*National Starch Mfg. Co.* v. *Duryea et al.*, 101 Fed. Rep., 117.

*Same* v. *Same*, 79 Fed. Rep., 651.

*Gilman* v. *Hunnewell*, 122 Mass., 139.

*English et al.* v. *N. Y. Pub. Co.*, 8 Daly (N. Y.), 375.

*Marcus Ward & Co.* v. *Ward et al.*, 15 N. Y. S., 913 (61 Hun., 625).

*Burgess* v. *Burgess*, 3 DeG. M. & G., 896.

VIII.

It being a general custom to employ personal names for corporations, no distinction can be made between the use of such names in a firm and in a corporation, since in both cases the names adopted are selected and artificial.

*Goodyear Rubber Co.* v. *Goodyear Rubber Mfg. Co., supra.*

*Baker* v. *Baker,* 115 Fed. Rep., 297 (303).

*Celluloid Mfg. Co.* v. *Cellonite Mfg. Co.,* 32 Fed. Rep., 94.

*Monarch* v. *Rosenfeld et al.,* 39 S. West. Rep., 236 (19 Ky. Law Rep., 14).

*Am. Cereal Co.* v. *Eli Pettijohn Cereal Co.,* 72 Fed. Rep., 903.

*Hazelton Boiler Co.* v. *Hazelton Tripod Boiler Co.,* 142 Ill. Sup., 494.

*Scott Stamp & Coin Co., Limited,* v. *J. W. Scott Co., Limited,* 15 N. Y. S., 325 (58 N. Y. Super. Ct., 379).

*Employers' Etc., Co.* v. *Employers' Etc., Co.,* 10 N. Y. S., 845 (61 Hun., 552).

IX.

The courts recognize that the business of a corporation or of a firm in which a man has his capital invested, and to which he devotes his whole time and energy is HIS business, and that he has a right to use his name in connection therewith.

*Meneely* v. *Meneely et al., supra.*

*Natl. Starch Co.* v. *Duryea et al., supra.*

*Monarch* v. *Rosenfeld, supra.*

*Scott Stamp & Coin Co., Limited,* v. *J. W. Scott Co., Limited, supra.*

*Hazelton Boiler Co.* v. *Hazelton Tripod Boiler Co., supra.*

X.

Although it is true that there is no *necessity* for a man engaged in a corporation or in a firm to employ his name in connection therewith—since both firm and corporate names are alike artificial—this lack of necessity for using a personal name cannot affect the individual's *right* to so use it, because such use is a universally recognized legitimate and reasonable use of a personal name.

*Meneely* v. *Meneely, supra.*

*Turton & Sons* v. *Turton & Sons*, 42 Ch. D., 128.

*Continental Ins. Co.* v. *Continental Ass'n.* 96 Fed. Rep., 846.

*Chivers & Sons* v. *Chivers & Co.*, 17 R. C. P., 420.

XI.

The decisions recognize family reputation as a valuable heritage and as an ample reason for the use by a man of his name in the selection of a firm name and in its business. In the case at bar defendant has never imitated complainant's signs, labels or other indicia, nor trespassed upon its good will (which complainant *owns*), but has simply availed in an honest way of the family reputation (*which complainant does not own*) of Mr. Franklin Remington, the general manager of the Remington-Sholes Company.

*Meneely* v. *Meneely, supra.*

*Natl. Starch* v. *Duryea et al., supra.*

*Gilman* v. *Hunnewell, supra.*

See German decisions regarding name "Remington-Sholes" at the end of this brief.

XII.

Where a name is incapable of exclusive appropriation —like the name Remington—a court will not destroy the right of another to use such name but will direct its injunctive process against the specific abuse of the right, if any such has occurred. The sweeping decrees of the lower courts in the case at bar are therefore manifestly in error.

*Singer Mfg. Co.* v. *June Mfg. Co., supra.*

*Meriden Brittania Co.* v. *Parker,* 12 Am. Rep., 401 (39 Conn., 450).

*Ill. National Watch Co.* v. *Ill. Watch Case Co., supra.*

XIII.

That defendant in the case at bar has not been guilty of any unfair trade competition (unless the use of the name "Remington-Sholes" be so regarded) is conclusively established by the record and has been unanimously so held by the Circuit Court of Appeals (R. 1522) in the following language:

> "We do not find in this voluminous record sufficient evidence that defendant (by which name the Remington-Sholes Company is designated in the opinion) has itself done anything to promote confusion in the minds of the public, except to use the name 'Remington' on its machines and in its literature."

XIV.

The record in this case being devoid of any showing that there has ever been any deception or mistake or injury to complainant by reason of the use of the name "REM-SHO," this court will not disturb the unanimous finding of the Court of Appeals allowing defendant's right to use such fanciful name.

## ARGUMENT.

The charges of the bill of complaint may be summarized as follows:

(*a*) That defendant has been guilty of wrong-doing by infringement upon complainant's alleged trade-mark "Remington," registered in the U. S. Patent Office October 23, 1888.

(*b*) That the organizers of the Remington-Sholes Company were guilty of fraudulent invasion of complainant's rights in the organization of such company and in the adoption of its corporate name.

(*c*) That the Remington-Sholes Company and defendant have been guilty of unfair trade competition by the manner in which they have marked their machines and placed the same before the public.

Complainant's claim to relief in this case is dependent upon the character of its right to the use of the name "Remington." The questions, therefore, that confront this court are: (1) Does this name constitute a valid trade-mark and has the complainant the exclusive right thereto; or, is the name "Remington" one incapable of exclusive appropriation? (2) If the name is not a valid trade-mark, what right, if any, has complainant with respect thereto and to what relief does such right entitle it? (3) Has defendant been guilty of trespass upon any right that complainant may possess?

**A correct determination of these questions will be aided by keeping in mind the unanimous conclusion of the Court of Appeals (R. 1522) that "we do not find in this voluminous record sufficient evidence that defendant" (by which name the**

**Remington-Sholes Company is designated) "has itself done anything to promote confusion in the minds of the public, except to use the name 'Remington' on its machines and in its literature."**

That a personal name cannot be exclusively appropriated by anyone as against others having a right to use such name, is conclusively settled by the repeated decisions of this court.

*Brown Chemical Co.* v. *Myer et al.*, 139 U. S., 540.

*McLean* v. *Fleming*, 96 U. S., 245.

*Canal Co.* v. *Clark*, 13 Wall., 311.

*Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169.

*Elgin Nat'l Watch Co.* v. *Illinois Watch Case Co.* 179 U. S., 665.

*Goodyear Rubber Mfg. Co.* v. *Goodyear Rubber Co.*, 128 U. S., 598.

Nor is the fact that a complainant asserts an exclusive right to a personal name, in part, at least, because of its registration as a trade-mark in the U. S. Patent Office of any moment, as the authorities are uniform in holding that registration cannot add to a complainant's right to relief nor give validity to an otherwise invalid trade-mark.

*Elgin Nat'l Watch Co.* v. *Illinois Watch Case Co., supra.*

*Sarrazin* v. *Irby Co.*, 93 Fed. Rep., 625 (C. C. A.)

The name "Remington" being an ordinary family surname, was manifestly incapable of exclusive appropriation as a valid trade-mark, and the registration of such mark in the Patent Office can confer no rights upon the complainant.

The contention of counsel for complainant that the name "Remington" has acquired "a secondary meaning," and that for this reason complainant is entitled to appropriate it, is without force. The books will be searched in vain for any case (except that of the lower court in the English case of *Cash* v. *Cash,* 18 R. P. C., 212) in support of the contention that a monopoly in a personal name can be created by any secondary meaning that may have attached thereto. The latest case before the English Court of Appeals involving the right to the use of a personal name, was the appeal of this case of *Cash* v. *Cash* (reported in Times Law Reports, N. 13, Vol. 18, p. 299, Feb., 1902). In that case the lower court by Kekewich, J., had enjoined the defendant Cash, who was doing business under the name of "Joseph Cash & Company," from selling frillings under this name or under the name of Cash, because the name "Cash" had become so associated with complainant's frillings that confusion of trade was inevitable. This decision of Kekewich, J., which is cited in Kerly on Trade-Marks, p. ii, "as a striking illustration . . . of the tendency to abandon rules which were formerly assumed as settled principle," caused that learned author to express the "hope that the question how far the rule that a man may under all circumstances, honestly use his own name, for which *Burgess* v. *Burgess* has been cited for more than forty years, is now to be relied on, will before long be considered by the highest tribunal." The Court of Appeals after reversing this sweeping order of the lower court said, in speaking by Williams, L. J.:

> "It may be that a trade is of such a nature that the products of that trade, associated with a particular trade name, have become almost indissolubly connected with the business carried on by the particular

> manufacturer who has created that particular business. But still, even though that may be so, and even though the nature of the trade has to be taken into consideration in an action for an injunction, there never has been a case yet where an order has been made restraining a man altogether from carrying on in his own name a particular trade. Every decision up to the present time has been limited to restraining him from carrying on a trade which has thus become so identified with the business of another person, without taking the steps which any honest man would wish to take to prevent his goods being confounded with the other person's goods which have become so identified with the name."

A further conclusive answer to the contention that the name "Remington" is susceptible of exclusive appropriation because it is said to have acquired a "secondary meaning" is, *first,* that the wrong complained of is defendant's alleged attempt to pass off its machine as one "made by a Remington," or by a company comprising a Remington; *second,* that the witnesses (Weingart, Stallwood *et al.*) produced to show that they were misled by the name "Remington," all state that they relied upon the name Remington as indicating that the machine was *made by the Remingtons.* Indeed, the vehemence with which complainant attacks as fraud any assertion by defendant as to the connection of a Remington with the manufacture of the "Rem-Sho" is irreconcilable with any pretense that such name has acquired a secondary or non-descriptive meaning.

On the other hand, if it be admitted that the name "Remington" has acquired a secondary meaning, and does not convey the idea that there is any one of that name connected with the manufacture of complainant's machines, it is not seen how it is possible that the word with such meaning can be confounded with words which

unmistakably announce that defendant's machines are made by the Remington-Sholes Company of Chicago. Obviously, there is no "secondary meaning" conveyed by the name Remington in the manner in which it is used by defendant, this name being invariably associated with the purely personal name "Sholes" in the name Remington-Sholes Company and being designed, as the Supreme Court said in *Goodyear Rubber Co.* v. *Goodyear Rubber Co., supra,* to indicate that the parties (in this case Remington and Sholes) "have formed an association or partnership."

**The Restrictions Upon the Use of a Personal Name.** —This court has had occasion in a number of cases to state in no uncertain language what restrictions pertain to the use of personal or other names incapable of exclusive appropriation.

Thus, in *McLean* v. *Fleming*, 96 U. S., 245, in affirming a man's right to his own name as against another of *different* name, and after citing the leading case of *Meneely et al.* v. *Meneely*, 62 N. Y., 427, and others, it was said:

> "He cannot have such a right even in his own name as against another person of the same name, unless such person uses a form of stamp or label so like that used by the complaining party as to represent *that the goods of the former are of the latter's manufacture*. . . . Colorable imitation which requires careful inspection to distinguish the spurious trade-mark from the genuine is sufficient to maintain the issue; but a court of equity will not interfere, when ordinary attention by the purchaser of the article would enable him at once to discriminate the one from the other."

In *Brown Chemical Company* v. *Myer et al.*, 139 U. S., 540, plaintiff adopted as a trade-mark for its medicine

the words "Brown's Iron Bitters," and the defendants used upon their medicine the words "Brown's Iron Tonic." This court, after commenting upon the descriptive character of the words "Iron Tonic," and confirming the defendant's right to the use of these, said:

> "It is hardly necessary to say that an ordinary surname cannot be appropriated as a trade-mark by any one person as against others of the same name who are using it for a legitimate purpose; although cases are not wanting of injunctions to restrain the use, even of one's own name, where a fraud upon another is manifestly intended or where he has assigned or parted with his right to use it."

And after citing numerous authorities and quoting at length from the leading case of *Croft* v. *Day*, 7 Beav., 84, the court adds:

> "These cases obviously apply only where the defendant adds to his own name *imitation of the plaintiff's labels, boxes or packages*, and thereby the public are induced to believe that his goods are those of the plaintiff. A man's name is his own property, and he has the *same right* to its use and enjoyment, as he has to that of any other species of property. If such use be a reasonable, honest and fair exercise of such right, he is no more liable for the incidental damages he may do a rival in trade, than he would be for an injury to his neighbor's property by the smoke issuing from his chimney, or for the fall of his neighbor's house by reason of necessary excavations upon his own lands. These and similar instances are cases of *damnum absque injuria*."

In *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169, the law is thus stated:

> "Although every one has the absolute right to use his own name honestly in his own business, even though he may thereby incidently interfere with and injure the business of another having the same name, in such case the inconvenience or loss to which those

having a common right are subjected is *damnum absque injuria*, but although he may thus use his name he cannot resort to any artifice, or do any act calculated to mislead the public as to the identity of the business, firm or establishment, or of the article produced by them, and thus produce injury to the other beyond that which results from the similarity of name."

In *Goodyear Rubber Mfg. Co.* v. *Goodyear Rubber Co.*, 128 U. S., 596, attempt was made to restrain defendant from using its corporate name. In reversing the decision of the Circuit Court it was said:

> "The case at bar cannot be sustained as one to restrain unfair trade. Relief in such cases is granted only where the defendant, by his marks, signs, labels, or in other ways, represents to the public that the goods sold by him *are those manufactured or produced by the plaintiff*, thus palming off his goods for those of a different manufacture, to the injury of the plaintiff. *McLean* v. *Fleming*, 96 U. S., 245; *Sawyer* v. *Horn*, 4 Hughes, 239; *Perry* v. *Truefitt*, 6 Beavan, 66; *Croft* v. *Day*, 7 Beavan, 84."

Again, in *Illinois National Watch Co.* v. *Illinois Watch Case Co.*, 179 U. S., 665, this court used the following pertinent language, viz.:

> "But it is contended that the name 'Elgin' had acquired a secondary signification in connection with its use by appellant, and should not, for that reason, be considered or treated as merely a geographical name. It is undoubtedly true that where such a secondary signification has been acquired, its use in that sense will be protected by **restraining the use of the word by others in such a way as to amount to a fraud on the public and on those to whose employment of it the special meaning has become attached.** . . .
>
> "If a plaintiff has the absolute right to the use of a particular word or words as a trade-mark, then, if an infringement is shown, the wrongful or fraud-

ulent intent is presumed, and although allowed to be rebutted in exemption of damages, the further violation of the right of property will nevertheless be restrained. But where an alleged trade-mark is not in itself a good trade-mark, yet the use of the word has come to denote the particular manufacturer or vendor, **relief against unfair competition or perfidious dealing will be awarded by requiring the use of the word by another to be confined to its primary sense by such limitations as will prevent misapprehension on the question of origin."**

*Centaur Co.* v. *Marshall*, 97 Fed. Rep., 785 (C. C. A.).

In *Meriden Brittania Co.* v. *Parker*, 12 Am. Rep., 401 (39 Conn., 450), the court granted an injunction as to the infringing marks, but refused to enjoin defendant against the use of the name "Rogers." In a valuable note at the end of that case the reporter very clearly sums up the result of the authorities as follows:

"A man has a right to the free and unrestricted use of his own name in trade or manufacture notwithstanding another of the same name may have previously set up the same business in the same locality and acquired a celebrity for his goods, unless the former in connection with his own name use some mark or device that has become the property of the latter, or is otherwise guilty of affirmative acts designed to deceive the public and induce them to believe that the goods of the former are the goods of the latter, **and in such cases the use of such mark or device, or the practice of such acts, will be restrained but not the use of the name."**

The foregoing and numerous other authorities conclusively establish the following propositions:

*First*, that no one can have an exclusive right to, or a valid trade-mark in a personal name as against others of the same name.

*Second*, that where the name is one incapable of exclusive appropriation,

> "relief against unfair competition or perfidious dealing will be awarded by requiring the use of the word by another to be confined to its primary sense by such limitations as will prevent misapprehension on the question of origin."

*Third*, that a person may not in the use of his name resort to any artifice or fraud for the purpose of palming off his wares upon the public for those of his rival.

Your Honors will notice that the decrees of the Circuit Court and of the Circuit Court of Appeals in this cause, in the absence of any imitation of the characteristic marks of complainant's machine and in the face of the fact that defendant's machines are distinctly marked with the manufacturer's name and address, *without qualification or reservation*, enjoin defendant from the use of the personal name "Remington" in *any manner whatsoever* upon typewriting machines, the injunction being more particularly directed against the placing upon typewriting machines of the inscription "REMINGTON-SHOLES COMPANY, MFRS., CHICAGO."

Plainly these sweeping decrees are repugnant to the decisions of this court, since such decrees are not directed to the *correction* of any supposed *abuse* of the right to use the personal name, but to the entire *extinction* of such right.

If this court find that defendant, under the circumstances of this case, had no right whatever to use the words "Remington-Sholes" in *any manner*, and that the use of such words violate complainant's rights, then the decree of the Court of Appeals was obviously correct; but, if the finding be that the wrong of the defendant consisted in some particular way in which these words were used,

then the decree of that court with respect to such words was plainly wrong, because it should have been directed, not to the extinction of defendant's right to use the words at all, but to the correction of any abuse that may have been made of such right. It is the province of a court of equity to correct the abuse of a right—not to destroy it.

**What is Required of a Defendant.**—Nor do the decisions of this court leave any room for doubt as to the means to be employed by a defendant in distinguishing his wares from those of another.

In *Singer Mfg. Co.* v. *June Mfg. Co., supra,* as in the case at bar, complainant's machine, which was designated by a surname, had been protected by many patents, the most important of which had expired. Complainant's machines not only bore the name "Singer," but also a distinctive trade-mark stamped upon a brass label of oval shape attached to the base of the arm of the machine. Defendant marked its machines with the name "Singer" and extensively advertised them as "Improved Singer Sewing Machines," "The Improved Singer," etc., but as all its circulars and advertisements contained the statement that its machines were manufactured by the defendant, the court held that such were fair and proper. The name "Singer," as used by complainant during the life of the controlling patents came, as the court found (p. 183), "to indicate in its primary sense to the public the class and type of machines made by the Singer Company or corporation," although this name "also came in a secondary sense to convey to the public mind the machines made by the firm or corporation." The court held that upon the expiration of the controlling patents the right to use the name "Singer" in every form passed to the public, saying, also, "nor is this right governed by

different principles where the name that has become generic, instead of being an arbitrary one, is the name of the patentee or original manufacturer." After a lengthy consideration of the authorities of this and foreign countries, it was said:

> "The result, then, of the American, the English and the French doctrine universally upheld is this, that where, during the life of a monopoly created by a patent, a name, whether it be arbitrary or be that of the inventor, has become, by his consent, either express or tacit, the identifying and generic name of the thing patented, this name passes to the public with the cessation of the monopoly which the patent created. Where another avails himself of this public dedication to make the machine and use the generic designation, he can do so in all forms, with the fullest liberty, by affixing such name to the machines, by referring to it in advertisements and by other means, subject, however, to the condition that the name must be so used as not to deprive others of their rights or to deceive the public, and, therefore, that the **name must be accompanied with such indications that the thing manufactured is the work of the one making it, as will unmistakably inform the public of the fact.**"

The court, when considering defendant's machines, says:

> "There was an entire failure on the part of the defendant to accompany the use of the word 'Singer' on the machines made and sold by him with sufficient notice of *their source of manufacture*, to prevent them from being bought as machines made by the Singer Mfg. Co., and thus operate an injury to private rights and a deceit upon the public."

And, after commenting upon the fraudulent imitations by defendant of peculiar marks, etc., of complainant's machine (p. 201), the court adds (p. 203):

> "The right to use the word 'Singer' which caused

> the imitative infringement in the device, being lawful, it is plain that **the infringement only resulted from the failure to plainly state along with the use of that word the source of manufacture,** and therefore this branch of the question is covered by the same legal principle by which we have determined the other. It follows, therefore, that the judgment below, which recognized the right of the defendant to make or vend sewing machines in the form in which they were made by him—that is, like unto the machines made upon the principles of the Singer system—with the use of the word 'Singer,' **without a plain and unequivocal indication of the origin of manufacture,** was erroneous."

Again, this court, in *Holzapfel Co.* v. *Rahtjens Co.*, 183 U. S., 1, recognized that defendant fulfilled its duty, in distinguishing its goods from those of complainant, when they were plainly described as of defendant's manufacture.

The following comparison of the respective marks upon complainant's and defendant's machines show how fully defendant has complied with the requirements fixed by this court:

| COMPLAINANT'S MARKS. | DEFENDANT'S MARKS. |
|---|---|
| Remington. | REM-SHO. |
| Large Red Seal. | REMINGTON-SHOLES CO., MFRS., CHICAGO. |
| Remington Standard Typewriter, Manufactured by Wyckoff, Seamans & Benedict, Ilion, N. Y., U. S. A. | |
| Remington Standard Typewriter. | |

The marking of its machines by a defendant with its name and address is uniformly recognized by the courts as one of the strongest indications of the absence of fraudulent intent to confound its business with that of a

complainant. The distinct manner in which the Remington-Sholes Company has marked its machines with its name and address and with the name Rem-Sho (see R. 1458), must clearly differentiate such machine in the public mind from complainant's, all of which are marked with its name and address, even if the omission of all the characteristic marks of complainant's machine, its Red Seal, etc., were not ample for this purpose.

In the recent case of *Baker* v. *Baker*, 115 Fed. Rep., 297, the Court of Appeals for the Second Circuit said with respect to defendant's corporate name, which was "William H. Baker, Syracuse, N. Y.":

> "A part of that name is the place of business, and every person who deals with the defendant is thereby notified that its business domicile is not the domicile of the complainant."

In Sebastian on Trade-Marks (4th Ed.), 123, the author, after citing many authorities to the point, summarizes the law as follows:

> "On the other hand, if the defendant uses on the goods which he is alleged to be endeavoring to pass off as the plaintiff's, a distinct and obvious trade-mark" (*e. g.*, "Rem-Sho") "or if he states plainly and in fair size and clear type that such goods are in fact manufactured by himself" (*e. g.*, "Remington-Sholes Company, Mfrs. Chicago") "there is a strong indication that the defendant has no intention of attempting deception."

In the case of *P. Lorillard* v. *Peper*, 86 Fed. Rep., 956 (C. C. A.), Mr. Justice Brewer said:

> "The two principal ways by which an article is distinguished in trade are, *first* the name of the manufacturer; *second* the descriptive name."

*Corbin* v. *Gould*, 133 U. S., 308.

*Coats* v. *Merrick Thread Co.*, 149 U. S., 562.

*Kahn et al.* v. *Diamond Steel Co. et al.*, 89 Fed. Rep., 706.

*Proctor & Gamble Co.* v. *Globe Refining Co.*, 92 Fed. Rep., 357.

*Duryea et al.* v. *National Starch Manfg. Co.*, 79 Fed. Rep., 651.

*Dadirrian* v. *Yacubian et al.*, 98 Fed. Rep., 872.

*Singer Manfg. Co.* v. *June Manfg. Co., supra.*

**Precautions of Remington-Sholes Company and its Predecessors to Avoid Possible Confusion.**—The record shows that since the organization of the old Remington-Sholes Typewriter Company every precaution has been adopted to guard against the possibility of any confusion existing in the public mind with respect to said company or its successors.

At the very outset the old Remington-Sholes Typewriter Company adopted for its machine a highly ornamental, bronzed frame widely differing in appearance from the conventional black enameled, plain frame common to complainant's and other machines. To any one familiar with the typewriting machines on the market this radical difference in appearance must necessarily have differentiated defendant's machine from all others.

On June 25, 1894, and before the Remington-Sholes Typewriter Company had placed its machines upon the market, complainant notified said company (R. 805) that it claimed the exclusive right to use the name "Remington" and the name "Sholes" in any manner, together or separately, in connection with typewriting machines or with a corporation organized for their manufacture. As Mr. Sholes states (R. 439 and 440), it was not the purpose of the Remington-Sholes Typewriter Company to allow confusion to arise, but in the face of this warning

it was natural that extreme precaution should be adopted. At the outset, therefore, it plainly announced upon its store window, in its catalogues and in its advertisements (R. 439 and R. 1358) that it was "NOT the Remington Standard." And with regard to this even complainant's witness Crandall admits:

> "The expression is familiar to me as one used by the Remington-Sholes people either in circular matter or as a sign." (R. 306.)

Again, while the Record shows that it has been complainant's practice to conspicuously display upon its store windows, signs, stationary, catalogues, etc., its Red Seal trade-mark, its full name, Wyckoff, Seamans & Benedict and the name Remington Standard Typewriter, an examination of defendant's exhibits (R. 1445-1452) must at once make plain how unlike these in every respect are the signs, the stationary, and the whole literature of defendant.

The record also shows that it has been the uniform practice of the Remington-Sholes Typewriter Company and its successors to instruct their salesmen to explain fully the origin and history of the machine to prospective purchasers so that no possible doubt could exist with respect to its entire independence of complainant. (R. 440; R. 1041, 1142, 1169, 1262, 1278, 1309, 1322, 1331.) Moreover, the various offices of the Remington-Sholes Company, of defendant and of all persons handling the "Rem-Sho" machine have been supplied with "Rem-Sho" catalogues conspicuously displayed and given out to inquirers and prospective purchasers. The free and general manner in which these catalogues have been distributed appears from both complainant's and defendant's

testimony. In these catalogues the following statement occurs:

"IN REGARD TO OUR NAME. The question is often asked, 'What connection has the Remington-Sholes Company with the Remington Standard Typewriter?' We answer, none whatever. The 'Rem-Sho' Typewriter is manufactured by the Remington-Sholes Company in Chicago, Ill., U. S. A. It originated in the brain of Mr. Zalmon G. Sholes, a son of the original inventor of the Remington Standard Typewriter. In 1893 Mr. Sholes came to Mr. Remington, a son of the original manufacturer of the well-known typewriter which bears his name, and laid his plans and the results of his work before him. The two formed a partnership, and began at once to develop the typewriter with which they are now identified. Later, a company was formed of strong capitalists to manufacture the machine and put it on the market, since when it has been tested by four years' use and the Nos. 2, 3, 4 and 5 Models brought out under the personal supervision of Mr. Fay.

**"We state then, emphatically, that this Company has no connection whatever with that well known and excellent machine, the Remington Standard Typewriter, and caution all possible customers against confusing the 'Rem-Sho' with that machine or any other.**

"We are sometimes asked about the right of the Messrs. Remington and Sholes to the use of their own names in connection with typewriters. In answer we would say that the law is absolutely clear that every man has a right to use or permit the use of his own name (which is his birthright) in business, provided it is so used as not to deceive. In order to prevent deception *absolutely*, we have made our machine, in finish and outward appearance, entirely unique, and in all public advertisements, signs, marks and statements, we are careful to set forth that it must not be confounded with any other. This is in accordance with law and good faith, and

renders our use of these names morally and legally unassailable."

It is idle for complainant's counsel to pretend that there is any ambiguity or uncertainty about this cautionary notice. A reference to the "Remington Standard Typewriter" identifies complainant's machine more certainly than any other name could do—more certainly by far than any mere reference to complainant by its corporate name, since it gives the true name of complainant's machine, the name that it has registered as a trade-mark in the Patent Office (R. 1487), the name by which the machine was designated in the assignment from E. Remington & Sons (R. 717), and the name that has appeared upon every machine that has issued from complainant's factory.

If it be true that Messrs. Remington and Sholes had the right to use their names like other individuals (and as this court has said, "the same as other property"), and to organize a corporation in keeping with modern business methods, can one conceive of any more fair or scrupulously honest means that could have been adopted to guard against all possibility of trade confusion than the widespread distribution of these circulars?

**It is simply inconceivable that any purpose to confound its name or its machine with that of complainant could have existed in view of the persistent and constant statements to the contrary and in the face of the fact that every one of its machines is conspicuously marked with the name "REM-SHO" and the words "REMINGTON-SHOLES COMPANY, MFRS., CHICAGO," and in face of the further fact that its machine differed so radically in appearance from complainant's.**

In *Goodyear Rubber Mfg. Co.* v. *Goodyear Rubber Co.*, 128 U. S., 598, a case similar in many respects to that here presented, the following pertinent language was used (p. 604):

> "There is no proof of any attempt of the defendant to represent the goods manufactured and sold by it as those manufactured and sold by the plaintiff; but, on the contrary, **the record shows a persistent effort on its part to call the attention of the public to its own manufactured goods, and the places where they are to be had, and that it had no connection with the plaintiff.**"

In *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169, this court said (p. 200), in considering the manner in which defendant had used the name "Singer":

> "This leaves only two questions, first, whether that name as used in the circulars and advertisements of the defendant is accompanied with such plain information as to the source of manufacture of the machines by them made as to make these circulars and advertisements lawful; and, second, whether this also is the case with the use of the word 'Singer' on the machines which the defendant makes and sells. As to the first of these inquiries **the proof shows that the circulars were so drawn as to adequately indicate to any one in whose hands they may have come that the machines therein referred to were made by the June Manufacturing Company, and not by the Singer Company.** We therefore dismiss the circulars from view."

In *Hazelton Boiler Co.* v. *Hazelton Tripod Boiler Co.*, 40 Ill. App., 430, it was said:

> "It is not shown that the defendants have endeavored or intended to deceive anybody; we do not find that they have sought to palm off their goods as the manufacture of the plaintiff; on the contrary, *the record shows that defendants have issued a circular*

> *warning to the public not to confound the 'Hazelton Tripod Boilers' with the 'Hazelton;'* and have also issued a statement that it, the 'Hazelton Tripod Boiler Company,' has no connection with 'The Hazelton Boiler Co.' of New York."

In *Hazelton Boiler Co.* v. *Hazelton Tripod Boiler Co.*, 142 Ill. Sup., 494, the Supreme Court of Illinois, in affirming the decision of the Appellate Court, said (pp. 508-9):

> "It is not shown that the defendant has ever attempted in any way to palm off its own boilers as being of the complainant's manufacture. On the other hand, the evidence seems to show more than ordinary efforts on the part of the defendant to apprise the public that it and the complainant were two separate concerns having no connection with each other, and that its boilers were different from those manufactured by the complainant."

In *Genesee Salt Co.* v. *Burnap*, 73 Fed. Rep., 818 (C. C. A.), the court said (p. 822):

> "It appears that, immediately upon the complaint being made by the Genesee Salt Company that this was a colorable imitation of their goods, Burnap & Burnap sent out 5,000 circulars making clear the difference, and that their salt was Genesee County Salt, as distinguished from the salt of the Genesee Salt Company. . . . By their circulars, the defendants, if they ever had any purpose to pirate the business of the Genesee Salt Company by use of the words 'Genesee Co.' abandoned it, and explained to the public what was the fact, namely, that their salt was made in Genesee County."

It has been urged that the very fact of the statements made by the Remington-Sholes Company and its predecessor in catalogues, signs, etc., to the effect that no connection whatever existed with complainant, would indicate a recognition that there was danger of confusion

arising, but the plain answer to this is that these statements were made after the threat of complainant contained in its notice of June 16, 1894, and repeated at later dates. (R. 292.) We do not believe that this court will follow complainant's counsel in their effort to distort an honest precaution into a guilty confession.

Indeed, in many cases in which great confusion has arisen, the courts have restricted complainant's remedy to a requirement that defendant indicate the fact that he has no connection with complainant. *Walter Baker & Co.* v. *Sanders et al.*, 80 Fed., 889 (C. C. A.); *Allegretti Cream Chocolate Co.* v. *Keller*, 85 Fed., 643. In these Baker cases the court recognized that the most effective way for the defendant to distinguish his goods was to use a statement reading as follows:

> "W. H. Baker is distinguished from and has no connection with the old chocolate manufactory of W. Baker & Co."

Where a complainant's package or machine does not contain his name and address, but the trade-mark alone is relied upon, it stands for his signature. In such a case, if a defendant adopt the same trade-mark and adds *his* name and address, such act, instead of tending to differentiate his goods, manifestly tends to divert complainant's trade, and under such circumstances is an "aggravation" of the wrong. Such a case was that of *Menendez* v. *Holt*, 128 U. S., 514 (520), where complainant's package bore the fanciful name "La Favorite," but *did not bear complainant's name*, and where defendant's package also bore the name "La Favorite," together with defendant's name and address.

But in a case like that at bar, where the invariable practice of the complainant has been to mark its machines

with both its full name and address (*i. e.*, "Manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A."), in addition to its adopted marks (*i. e.*, "Remington" and "Remington Standard" and the "Red Seal"), then the act of defendant in marking its full name and address (*i. e.*, "Remington-Sholes Company, Mfrs. Chicago"), as well as the marking of the machines with a radically different trade-mark (*i. e.*, "Rem-Sho"), must conclusively show a purpose to distinguish its machines from complainant's.

So, also, if a defendant's caution is directed only to the retailer and not to the ultimate purchaser (as was the case in *Pillsbury* v. *Pillsbury-Washburn Co.*, 64 Fed Rep., 841), it can have but little weight. On the other hand, where, as in the case at bar, a defendant's cautionary notice is directed to the ultimate purchaser and not to the dealer and is freely distributed, such fact is clearly incompatible with any purpose to deceive.

**No Fraud in the Adoption of the Name Remington-Sholes Company.**—The question that at once presents itself is whether it is true, as charged in the bill, that the name "Remington-Sholes Company" was adopted in fraud and as an artifice and for the purpose of misleading the public and appropriating complainant's trade.

Under the authorities the burden is upon complainant in this case, as in every case involving the question of a defendant's right to use a personal name, to conclusively establish both of two propositions, viz., *first*, that the name was fraudulently adopted and used by defendant for the purpose of palming off its goods as and for complainant's, because by the use of a personal name *in the absence of fraud* any confusion in trade is, as the courts

have repeatedly said, *damnum absque injuria;* and, *second,* that the name thus dishonestly adopted has in fact enabled the defendant to deceive or will in all probability enable him to do so.

Where, as in the present case, the machines of complainant and defendant have been in fierce competition for years, the court may well brush aside the question of mere probability of deception because if in all these years there has been no deception or real trade confusion, it is manifestly improbable that there ever will be any, and because in this case, as we shall show the court, the testimony of both complainant's and defendant's witnesses makes it plain that what little question there was at the outset has been steadily growing less as defendant's machine has become better known upon the market.

In determining the question of fraudulent intent upon the part of the organizers of the Remington-Sholes Company this court will give to the parties concerned at least that presumption of honesty that the law accords even to the veriest criminal. More than this, we believe that this court, viewing the acts of these parties from the standpoint of common sense, will attach to them so long as consistent with the ordinary rules of honesty that purpose and meaning which it is asserted they were intended to have. (*Shulze* v. *Hoagland*, 85 N. Y., 464; 467, and *Shotwell* v. *Dixon*, 163 N. Y., 43; 52.) If this be done the argument for complainant must be without force, for it is predicated not merely upon the assumption that the officers and organizers of the Remington-Sholes Company and its predecessor were dishonest, but upon the further assumption that the very means adopted by them to distinguish their company and their machine from complainant and its machine and so to prevent possible con-

fusion in trade were designed in fact as instruments of fraud.

**The Old Company.**—A fair determination of the question of fraudulent intent upon the part of its organizers involves a consideration of the circumstances that led to the organization of the defunct Remington-Sholes Typewriter Company, in rightful succession to which the "Remington-Sholes Company" admittedly stands. (R. 353.)

To show these circumstances and establish its charge of fraudulent intent, complainant produced as a witness Mr. Zalmon G. Sholes, who at the time was in the employ of Mr. Seamans, complainant's president (R. 442). The testimony of Mr. Sholes, far from proving any fraudulent intent or conduct upon the part of the organizers of the Remington-Sholes Typewriter Company, conclusively showed the entire honesty of those associated with him from the time he first met the Remingtons in 1893, after the failure of the Z. G. Sholes Co., until he left the employ of Mr. Fay in 1897.

As the statements of Messrs. Remington, Fay and Head could have thrown no further light upon the subject, this court will undoubtedly approve rather than condemn the omission of their depositions. In view of the size of this record it will be time enough to criticize the absence of other witnesses when it is shown wherein their testimony could have thrown light upon the questions at issue.

When Z. G. Sholes invented a typewriter and made a model of it he was pursuing the life-work of his father, C. L. Sholes. With pride in his work and in his family name he called his first model "The Z. G. Sholes," and having organized in Wisconsin a company for its manufacture, the name "The Z. G. Sholes Company" was

naturally adopted. Carver and Franklin Remington, whom Sholes met *after the failure of this company* and before any additional machines had been built or any placed upon the market, were young men about his own age. Carver Remington had had some experience at the Ilion factory of E. Remington & Sons; Franklin Remington had had none; but both were old enough to know that twenty years before their father's company, then world famous, had undertaken the manufacture of the typewriter of the elder Sholes and from it had developed a most profitable and important branch of its business. They saw here a chance that history might repeat itself, and Franklin Remington at once began to give his undivided efforts towards perfecting the machine, and towards interesting capital for its manufacture. (R. 413.) As to the machine itself, that "marked the culmination of their hopes and labors," Mr. Sholes aptly says (R. 429): **"We naturally thought we had the best machine that had ever been built, and I don't think that we ever failed to talk it."**

A consideration of the deposition of Mr. Sholes when testifying on behalf of complainant must show with what entire fairness he and the Remingtons invoked the aid of others, for which purpose the machine was shown to many. (R. 404.) The repeated assertion of counsel for complainant in their brief before the lower courts that the Remingtons became interested in the "Z. G. Sholes" machine for "speculative purposes," might be ignored except for the insinuation attached to the manner in which it was made. It is enough to say that while they doubtless hoped to gain financially by their investment the record will be searched in vain for a single instance of any kind of questionable conduct in their efforts to enlist the

aid of others. On the contrary, Mr. Sholes distinctly testified (R. 413) that he and Mr. Franklin Remington exhibited the model machine "ENDEAVORING TO INTEREST CAPITAL FOR THE PURPOSE OF MANUFACTURING THE MACHINE."

Before his meeting with the Remingtons, Sholes had known Mr. Clarence Seamans, complainant's president, and had had negotiations with him in regard to a purchase of the old Z. G. Sholes machine. (R. 415.) Sholes and the Remingtons soon after their meeting went to Utica, to Ilion and to New York City, at the invitation of a Mr. Dally (R. 405), taking with them the machine (R. 416), and showing it to the Remington Arms Company and to various persons connected with the factory of Wyckoff, Seamans & Benedict. (R. 417, 433.) *Mr. Seamans was not seen at that time nor afterwards* by either of the Remingtons or by Sholes in regard to the machine. (R. 433.) *Sholes testifies* (R. 444) *that he and the Remingtons decided to let Mr. Seamans take the initiative, if he cared to do so, in making any deal; that he merely wrote to Mr. Seamans inviting him to call in regard to the possibility of a sale* (R. 432), *and that Franklin Remington actually objected to opening negotiations with Mr. Seamans.*

**Adoption of Name Remington-Sholes.**—No intimation was given to Mr. Seamans, nor to any one at the time of the Ilion visit, as to what Sholes and the Remingtons proposed to call their machine, although at such time it was marked with the name "Z. G. Sholes," and after the name on the machine was changed to "Remington-Sholes" no further negotiations were had with Mr. Seamans. (R. 417.)

*After the eastern trip, Franklin Remington continued*

*to devote his entire time to the Sholes machine, seeking to interest capital, consulting with Sholes in regard to every change made in the model* (R. 429), *and furnishing the necessary funds to pay salaries and other expenses.* Is it surprising, therefore, that we find Sholes, *entirely without the knowledge of the Remingtons,* as he states (R. 427), changing the name of his machine to the "Remington-Sholes"? Certainly under the circumstances no name could have been more appropriate.

In the direct examination of Mr. Sholes, counsel for complainant attempted by a series of most flagrantly leading questions (R. 424 to 426) to induce him to say that the adoption of the name "Remington-Sholes" was influenced by the existence of the well-known "Remington" machine, but a reading of *all* of his deposition upon this point must show the failure of counsel's effort. Thus, on page 424 of the Record, Sholes says:

> "I thought it (the name 'Remington-Sholes') a good combination because my father was the originator of what is known as the Remington machine and Mr. Remington's father had been the manufacturer."

And again on page 426, when asked:

> "Q. 215. And did you think it would be an advantage because there had been and was a typewriting machine on the market in connection with which the name Remington had been and was used?"

He answered:

> "A. I explained that once before by saying that owing to my father being the originator of the Remington Standard machine and Mr. Remington's father being interested in the manufacture of the machine, I very naturally thought it of value for he and I to be associated together in the manufacture of another typewriter."

Counsel's effort to induce Mr. Sholes to qualify the

statements thus explicitly made falls within the condemnation expressed by this court of a like attempt by counsel in *Singer Mfg. Co.* v. *June Mfg. Co., supra* (p. 183).

*The machine was thus named and marked "Remington-Sholes" before Messrs. Remington and Sholes solicited and obtained the financial aid of Franklin H. Head and Charles N. Fay, of Chicago,* in the organization of a company for its manufacture. For a company created to manufacture a typewriter upon the development of which a Remington had expended thousands of dollars and months of constant personal effort, and which was the invention of a Sholes, and which came already christened, there seemed but one appropriate name, viz., the "Remington-Sholes Typewriter Company." As Sholes himself testifies in regard to the adoption of the corporate name (R. 428):

> "As I remember it, there was no discussion about it; it was a foregone conclusion that the name would be used; we had no discussion on it; kind of took it for granted."

Doubtless Mr. Head and Mr. Fay also agreed with Mr. Sholes that the name "Remington-Sholes" was "a good combination." It offered a "talking point" for the machine. The name Remington was admittedly a byword for good workmanship the world over long before the typewriter was conceived by the brain of the elder Sholes; and the coming together of the second generation of these families to whom the typewriter industry owed its origin was a *fact* and bit of history that might well be expected to enlist the public interest.

Not only do the facts so fully testified to by Mr. Sholes show the entire absence of any fraudulent intent upon the part of the organizers of the old company, but his testimony also gives positive proof that their purpose was

to avoid all possibility of confusion with complainant's machine. Thus (R. 439), he says:

> **"It was not our endeavor to confuse our machines with the Remington Standard Typewriter."**

And again (R. 440), his examination reads:

> **"As I said before, it was not our intention to confuse the Remington-Sholes machine with the Remington Standard.**
> **"284 X-Q. And you gave the salesman under you to understand this fact, did you not?**
> **"A. There was a general understanding to that effect, if I remember rightly."**

**The New Company.**—While the Remington-Sholes Typewriter Company was a financial failure, it succeeded in establishing a market for its machine, which became known throughout this country and abroad as the "Remington-Sholes." When, therefore, in the process of reorganization, a new company was formed for continuing the sale of such machine, it was not merely reasonable—it was inevitable—that with a view to maintaining the established business and organization and gaining the benefit of the work and advertising that had been done, a similar name should be adopted for the new company; and this was recognized by the assent of both Mr. Remington and Mr. Sholes to such use of their names. (R. 839.)

The record shows that upon the organization of the Remington-Sholes Company Mr. Franklin Remington was a stockholder in it to the extent of $15,000 (*representing his actual cash investment*), and at once became its general manager. At such time he brought with him nearly four years of constant and unremitting experience in the manufacture of typewriting machines; and he

brought with him also a family name that had stood for a half century as a synonym for honesty and good workmanship. These were his contributions to the new company, and under such circumstances the use of his name was manifestly not merely reasonable, but most appropriate.

The repeated assertions of complainant's counsel in their briefs before the Circuit Court and Circuit Court of Appeals, that stock in the new company was "donated" to Mr. Remington, is in plain disregard of the stipulation (R. 567), which expressly states:

> "That at about the time of the organization of said company (*i. e.*, the new company) the said common stock was divided among the stock holders in keeping with the amounts of cash *actually invested by them* in the Remington-Sholes Typewriter Company, and that the allotment of said common stock to said Franklin Remington was in keeping with such plan."

Not only was the abandonment of the name "Remington-Sholes Typewriter Company" in favor of the shorter name, "REMINGTON-SHOLES COMPANY," a step away from all possibility of conflict with complainant's most favored pseudonym, the "Remington Typewriter Company," but the change in the name of the machine from "Remington-Sholes" to the fanciful name "REM-SHO" was a still wider step in the same direction.

**The Vital Questions at Issue.**—It is manifestly of no importance now what may have been the result of the marking by the old company of its machines with the name "Remington-Sholes—Chicago," as the proof shows that such marking of the machines was abandoned long before this suit was brought. The important questions to be determined by this court are the *live ones*, viz., *first*,

whether the Remington-Sholes Company is entitled to use its corporate name; and *second*, whether its machines, marked as they are with the fanciful name "REM-SHO" and with the name and address "REMINGTON-SHOLES COMPANY, MFRS., CHICAGO," have enabled or will enable such company to palm them off upon the public as and for machines of complainant's manufacture.

The statement of this court in *Brown Chemical Co.* v. *Meyer, supra*, that the use of a personal name cannot be condemned if it be for a **"legitimate purpose"** and be **"a reasonable, honest and fair exercise of such right,"** and the condition imposed upon the use of a personal name in *Singer Mfg. Co.* v. *June Mfg. Co., supra*, viz., that a defendant **"may not resort to any artifice . . . and thus produce injury to the other beyond that which results from the similarity of the name,"** make plain the tests that must determine in every case like that at bar.

The vital questions that confront this court are, therefore, the following:

**1st. If a person having a name to which his ancestors have given a world wide reputation, uses such name as PART of the name of a corporation organized by him to manufacture a machine that "represented the culmination of his hopes and efforts," of which corporation he is a managing officer and to which his whole time, capital and energy are devoted, is such use a "legitimate" one, or is it an unreasonable, dishonest and unfair exercise of his right to use his name?**

**2d. Is the use of a personal name as PART of a corporate name, such a use as is calculated "to**

**produce an injury to another beyond that which results from the similarity of the name?"**

In determining the reasonableness of the use of the name "Remington-Sholes" for a corporation designed to manufacture a typewriter produced by Messrs. Remington and Sholes, regard will be had to those trade customs disclosed by the record and judicially noticeable that are plainly pertinent to the question. Thus it is but fair to notice that in all lines of industry the trend of modern manufacture is toward corporate management. So, too, the practice of giving personal names to corporations has become well nigh universal, and especially is this true of the typewriter trade. All the numerous typewriting machines now upon the market are made by corporations, and these, with but very few exceptions, bear the names of the inventors or of the manufacturers of the machines. Thus we find the "BLICKENSDERFER," the "DENSMORE," the "HAMMOND," the "JEWETT," the "FISHER," the "ELLIOTT & HATCH," the "ODELL-YOUNG," the "OLIVER," the "SMITH," the "FOX," the "WELLINGTON," the "YOST," and the "HALL," besides various other well-known machines manufactured by corporations of like names. In giving their names to the machine and to the company organized for its manufacture, Messrs. Remington and Sholes were but following the established custom of the typewriter trade. Certainly in the light of all the facts no course could have been more *reasonable* or fair.

In their opinion the majority of the Court of Appeals assert that the incorporators of the old Remington-Sholes Typewriter Company knew "that the use of the name 'Remington' in connection with the typewriting machine

would help to sell it as the name of 'Brown' and 'Peterson' would not." Possibly it would, but certainly this can not alter the fact that inasmuch as the production of the finished machine was due to the joint labors of Remington and Sholes and to the capital of the former, it was reasonable to employ both names. The family name of REMINGTON has for the past forty years held a reputation in the markets of the world different from that of "BROWN" or "PETERSON." It has stood as a synonym of good workmanship so long and in such different fields of manufacture that few if any American names show as divers and wide a reputation. In this respect it is almost unique, and many a name although of great distinction in some single line of industry seems insignificant by comparison.

Had Franklin Remington embarked in the manufacture of sewing machines, or agricultural implements, or indeed, of any other line of machinery, particularly if designed for international trade, the world-wide reputation of his family name would have unquestionably prompted its use. We submit, however, that it would scarcely seem reasonable that a son of Westinghouse, of Edison, of Corliss, of Carnegie, of Bessemer or of Krupp should voluntarily conceal his identity even though a Brown or a Peterson might do so. The simple fact is that men pride themselves upon their family reputation, and, however democratic we may be, it must be admitted that we view with deeper interest the son of such a distinguished father and look to find in him a measure of inherited skill.

**Decision of the German Courts Relative to the Name "Remington-Sholes."**—As these German decisions could not under the rulings of our courts be set up in support of a plea of *res adjudicata* they were not for-

mally offered in evidence, but notice was given upon the record (R. 1433) that at the hearing of the cause they would be referred to, and counsel for complainant was furnished at that time with copies of the decisions and with translations thereof. A consideration of these will show that the history of complainant and of the Remington-Sholes Typewriter Company was set forth before the German courts, and it was strenuously urged by the German representatives of complainant that the name "Remington-Sholes" was adopted for the fraudulent purpose of deceiving the public, and should be enjoined.

In the decision of the Kammergericht, promulgated October the 15th, 1897, the following pertinent language appears:

> "Accordingly, the defendant, who in this locality sells the typewriters of the Remington-Sholes Typewriter Co. of Chicago, cannot be prohibited from affixing said business name upon the goods of said house nor from using it in the course of business, or announcements, advertisements, etc. It is not open to dispute, that the defendant deals only in typewriters made by said concern, and that he actually obtains his goods from said concern.
>
> "The plaintiffs have tried to establish that the Remington-Sholes Typewriter Co. has unlawfully and sneakingly appropriated the word Remington. They do not dispute that two descendants of the typewriter manufacturer Remington, Franklin and Carver Remington, were among the founders of the concern and are still interested in the same; but again they claim that Franklin and Carver Remington entered into said concern only *pro forma*, to bestow upon it an apparent right to use their name so well known in this line of business. However, whatever the plaintiffs have actually shown by way of foundation to their opposition to the use of the name Remington can in no wise give rise to the con-

clusion, that in this instance a business name has been sneakingly appropriated. The plaintiffs have confined themselves to the following statement: Franklin and Carver Remington are the sons of Samuel Remington, one of the copartners of the old firm of Remington & Sons; neither of them have ever had anything to do with the running of the business of said firm, or, before entering into the present business under the name of Remington-Sholes Typewriter Co. ever occupied himself with the manufacture of typewriters. But even if both these points had been fully established, it would not result therefrom, that the two Remingtons would not become real associates in said new house and were only *pro forma* engaged by said house, that their name might be used for improper purposes. For it is quite possible, yea, even probable, that they should have seriously devoted themselves to the business of their father, and acquired special knowledge, in which they were formerly lacking. To choose this business, in order to take advantage of the reputation attached to their name in this line of business, they have a perfect and indisputable right."

Upon a revision or rehearing of the German case, the Reichsgericht (Imperial Supreme Court), by a decision published October 22, 1899, refused to reverse the decision of the Kammergericht.

While it is true that the German case was "an affidavit case" and arose under the German trade-mark law this fact is of no moment, (*a*) because the record here shows (R. 85) that such case was presented, in part at least, by respondent; (*b*) because the true history of the adoption of the name "Remington-Sholes" was presented to the German courts as in the case at bar; and (*c*) because the reasoning of the German opinions applies as forcibly to the facts here as to the facts before the German courts.

That these decisions of the German courts, although

not of controlling force, should be recognized as precedents, is fully established by the authorities.

*Liebig Extract of Meat Co.* v. *Libby, McNeill & Libby*, 103 Fed. Rep., 87 (89), (C. C. A.).

*Centaur Co.* v. *Heinsfurter*, 84 Fed. Rep., 955 (C. C. A.).

*Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169.

**Family Reputation Recognized as a Valuable Heritage.**—The courts have repeatedly recognized the fact that the value attaching to the good reputation of a man's name is a most appropriate reason for its use by his son when engaging in business; and where such reason exists, the leading cases have allowed such name to be prominently used by a son when associating himself with others, although a degree of confusion in trade has arisen that would have been avoided had the name selected been that of one of his associates.

The case of *Meneely* v. *Meneely*, 1 Hun., 367, which is singularly like the case at bar, is one that has been repeatedly cited with approval by this Court (*McLean* v. *Fleming; Singer Mfg. Co.* v. *June Mfg. Co.*, *supra*), and by the Federal and State Courts generally. In that case, Andrew Meneely, who was the father of the plaintiff and of one of the defendants (Clinton Meneely), had established at West Troy a bell foundry that gained a wide and favorable reputation. He associated in business with him his son, Edwin Meneely, one of the plaintiffs, and after his death, in 1851, Edwin, with one brother, continued to carry on the business under the name of E. A. & G. R. Meneely. The defendants were Clinton Meneely and one Kimberly, and they adopted the firm name of "Meneely & Kimberly," and began, in 1871, the manufacture of bells a short distance only from plaintiff's fac-

tory, marking their bells with such name. It was shown that considerable confusion was created in the public mind with respect to the bell foundries of plaintiffs and defendants on account of the use of the name "Meneely" by both concerns.

It was urged by plaintiffs that there was no necessity of the defendants using the name Meneely in the title of the firm, as it could as well have been called "Kimberly & Co." as "Meneely & Kimberly," but the General Term expressly and the Court of Appeals tacitly refused to compel the defendants even to reverse the name and call themselves "Kimberly & Meneely," though Kimberly was much the older man and had all the business experience in the firm and furnished all the capital. In the lower court the Referee found that the defendants, by the use of the name "Meneely" in the firm name of "Meneely & Kimberly," and by marking their goods with such name, expected to derive profit and advantage by reason of the great reputation in bell-founding given to the name Meneely throughout the country by Andrew Meneely and the plaintiffs, and found also that the use of the name Meneely "was calculated to and does mislead persons to the belief that defendants are the proprietors of the 'Meneely Bell Foundry' carried on by the plaintiffs." The lower court sustained the Referee and restrained the defendants from using the name Meneely about their business, but upon appeal the General Term unanimously reversed such decision. The reasons set forth in the opinion are so cogent that we quote from them at length. The court said:

> "In the case at bar, the defendants have not used the firm name of the plaintiffs, or any name by which it has been heretofore known or designated, but the name of 'Meneely & Kimberly,' as constituting a co-

partnership, while engaged in the same business as the plaintiffs have, for a long time, carried on. The objection is to the employment of the name of 'Meneely' in connection with the same business as the plaintiffs, at the place where the defendants are located, which is in the city of Troy on the opposite side of the Hudson River from where the plaintiffs are situated. . . .

" The question then arises, whether the defendants are liable to be enjoined without having done any wrongful act and merely because they assumed to use the name of one of them in connection with a business in which the ancestor of that defendant and of the plaintiffs had been engaged, and which by a life of industry and toil, and by skill he had made profitable, and an invaluable inheritance for his posterity. **The right to the enjoyment of a good name, personally or in connection with a business established by the labor and integrity of an ancestor is an inestimable privilege which cannot be too highly prized. As a general rule, every individual is entitled to the full benefits and advantages which such a privilege confers and should not be deprived of the same by the interference of the courts except in extraordinary cases and for the most cogent of reasons.** . . The defendant Clinton H. Meneely claimed the right to profit from the name which he inherited, and the good reputation which his father had earned in the business of bell founding. He was open and above board in declaring thus to derive advantage, and formed a partnership and conducted his business with the expectation and belief that profit would accrue to him by reason of the good name and celebrity which had attended his father's successful career. I am inclined to think that in this respect he committed no wrong, and that he has a perfect right to use his own name in his own business even although that name was the same as the one used by the plaintiffs and the business precisely of the same character."

The court distinguishes the case of *Sykes* v. *Sykes*,

*Croft* v. *Day*, *Holloway* v. *Holloway*, *Stonebreaker* v. *Stonebreaker*, and *Holmes B. & H.* v. *Holmes B. & A.*, saying with respect to the last-mentioned case that it "involved the element of estoppel." The court also says:

> **"There is quite a distinction between appropriating the good will of the business of a deceased father carried on at a particular locality and enjoying the benefit of his name as a man of skill and fair dealing in the business in which he was engaged."**

**Recognized Distinction Between Family Reputation and Business Goodwill.**—This is precisely the distinction that has determined the whole course of defendant and its principal in the present case. As their machines have been made under Mr. Remington's management they have rightfully sought the benefit of his family reputation. But far from committing any trespass upon the *good-will* to which complainant has succeeded, they have, by circulars, by signs, by advertisements, and by invariable instructions to their agents and dealers, taken every conceivable precaution against the possibility of such trespass.

The importance of this difference becomes at once apparent when it is remembered that the whole foundation of a suit like the present one is the alleged *trespass upon complainant's trade* by the representation that defendant's goods are of complainant's manufacture (*McLean* v. *Flemming*, *supra*), thereby effecting an injury to something that complainant *owns*, and is not a trespass upon a family reputation which a complainant *cannot own*.

In the case at bar, whatever injury complainant may have sustained (although the record is barren of any showing that it has been injured at all, as the lower court tacitly admits by its refusal of an accounting) is due en-

tirely to its trying to make a trade-mark out of a family name in order that it may gain the exclusive benefit of the *reputation* of such family for good workmanship in addition to the *good-will* of the branch of the business that it purchased.

Upon the appeal of the Meneely case (reported in 62 N. Y., 427) the decision of the General Term of the Supreme Court was affirmed, the court saying:

> "The bare statement of the scope of the injunction would seem to be sufficient to show that it ought not to have been granted and that the judgment awarding it was erroneous. The cases referred to in its support fall far short of sustaining it. If the defendants were using the name of Meneely with the intention of holding themselves out as the successors of Andrew Meneely and as the proprietors and managers of the old established foundry which was being conducted by the plaintiffs and thus enticing away the plaintiff's trade, or resorted to any artifices to induce the belief that the establishment of the defendants was the same as that of the plaintiffs, and, perhaps, if without any fraudulent intent they had done acts calculated to mislead the public as to the identity of the establishments and produce injury to the plaintiffs beyond that which resulted from the similarity of names, then the cases referred to sustain the proposition, not that a court of equity would absolutely restrain the defendant Meneely from the use of his own name in any way or form, but simply that the court would enjoin him from using it in such a way as to deceive the public and injure the plaintiffs. **The manner of using the name is all that would be enjoined, not the simple use of it;** for every man has the absolute right to use his own name in his own business, even though he may thereby injure the business of another person bearing the same name, provided he does not resort to any artifices or contrivance for the purpose of producing the impression that the establishments are identical, or does anything calculated to mislead.

**Where the only confusion created is that which results from the similarity of the names the court will not interfere.** A person cannot make a trade-mark of his own name, and thus obtain a monopoly of it which will debar all other persons of the same name from using their own names in their own business."

It is vain to deny the fairness and logic of this opinion of the New York Court of Appeals or its pertinency to the case at bar. The particulars in which the facts in that case differ from the facts of this all make for the defendant here. It will scarcely be urged that the defense there would have been weakened had Meneely and Kimberly established their place of business a thousand miles distant from complainants, as defendant's principal in this case has done, or had they taken the many precautions adopted by this defendant to avoid the possibility of confusion in trade, or had they conspicuously marked all their bells with some such fanciful name as "MEN-KIM" in the same manner that defendant here displays the trade-mark "REM-SHO" on its machines.

In the case of *National Starch Mfg. Co.* v. *Duryea et al.*, 101 Fed. Rep., 117 (C. C. A., 2nd Circ., Feb. 28, 1900); see also *Same* v. *Same*, 79 Fed. Rep., 651 (C. C. A.), the facts were briefly as follows: Hiram Duryea and his brothers had been controlling members of the Glen Cove Manufacturing Company, which had made a wide reputation for starch enclosed in packages labeled "DURYEA STARCH," and bearing a picture of the factory and the name of the company. At the time complainant bought the business, Hiram Duryea agreed not to engage in the manufacture of starch for a period of five years. After the lapse of such time and in 1895, two sons of Hiram Duryea, having no business or reputation, formed a partnership with two former salesmen of the Glen Cove

Company and of complainant, and entitled their firm "Duryea & Co.," the capital of the firm being furnished entirely by Hiram Duryea. Duryea & Company caused their starch to be manufactured for them by another company, and it was placed upon the market in packages on which were prominently displayed the words "LAUNDRY STARCH, PREPARED BY DURYEA & CO.," and "PURE CORN FLOUR, PREPARED BY DURYEA & CO." Before the younger Duryeas formed this partnership they were not manufacturers of starch.

In that case, as in the case at bar, it was alleged that the defendants had made an "unncessary" and unfair use of the name Duryea, since the firm could have used equally as well the names of the two salesmen who, with the Duryea brothers, comprised it. At Circuit the court found for complainant upon this point on a motion for preliminary injunction, but upon appeal from such decision it was held (79 Fed. Rep., 651) that defendants had not made an unfair, unreasonable or unnecessary use of the name Duryea. The court (Wallace, Lacombe and Shipman, Circuit Judges, and Brown, District Judge) there said:

> "Inasmuch as the defendants have not called their starch by this well-known name, and have not assimilated the labels upon their packages to those long used by the manufacturers at Glen Cove, the question is whether the defendants have made such an unnecessary and unfair use of the name of 'Duryea' as to deserve the unfavorable criticism of a court of equity. In the recent case of *Singer Manuf'g Co.* v *June Manuf'g Co.*, 163 U. S., 169, 16 Sup. Ct., 1002, it is declared by the Supreme Court to be a well-settled doctrine that: 'Every one has the absolute right to use his own name honestly in his own business, even though he may thereby incidentally interfere with and injure the business of another having

the same name. In such case the inconvenience or loss to which those having a common right are subjected is *damnum absque injuria.*' . . .

"If the new firm could properly adopt the name of 'Duryea & Co.' and if sufficient precaution were taken to show the public that the manufacture is not that of the successor of the Glen Cove Manufacturing Company, the complainant is not entitled to an injunction. **The firm consisted of four persons, two of whom were named 'Duryea,' and all of whom were without capital, which was furnished by the father of the two Duryeas, and who had now a right to permit his name to be used honestly in the starch business. Under this state of facts the firm was not dealing unfairly with the complainant in calling itself 'Duryea & Co.,' and in omitting to add the name of the former salesmen of the complainant.**

"Upon the second point, whereas the complainant uses the name 'Duryea Starch' and the picture of the Glen Cove factories, and said that it was the manufacturer, the defendants' packages simply assert that the starch which they contain is prepared by Duryea & Co. **We think that this is a sufficient declaration of the source of the manufacture, as distinguished from the well-known source at Glen Cove,** and that the labels are not objectionable, because, by reason of their marked dissimilarity from the complainant's labels, the public could not be misled."

When the Duryea case again came before the Court of Appeals upon the final hearing (101 Fed. Rep., 117), it was said:

"There is now evidence that the defendant's starch was vigorously pushed upon retail grocers by salesmen whom the purchasers formerly knew as salesmen of the complainant's product, and that grocers made representations, either by acts or orally, to their customers, in regard to the origin of the new product, which indicated either careless ignorance or

a willful disregard of the truth. Testimony is given by retail purchasers from the grocers that they were misled by the use of the name Duryea & Co. . . .

"That an incidental interference with and injury to the business of the complainant, which had the exclusive right to the use of the well-known name or title 'Duryea's Starch,' would occur—an injury which would be enhanced by the earnestness of competition in the field which the complainant and its predecessors had labored to occupy—and that an injury from honest competition is not remediable by a court of equity, are also manifest. The point which is urged by the complainant is that the defendants use the name of Duryea, and have pressed the article which they sell upon the public by the use of that name, 'unaccompanied with any precaution or indication' that the article was not the manufacture of the complainant, and thus that their silence is an artifice which misleads (*Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169, 16 Sup. Ct., 1002, 41 L. Ed., 118); and that neither the original members of the firm nor Hiram Duryea have taken pains to differentiate their goods from those of the complainant. The complainant uses the familiar label, which contained a picture of the factory buildings at Glen Cove, with its name as the manufacturer of the starch in lieu of the name of its predecessor, and with the words 'Duryea's Starch.' The defendant's label is entirely dissimilar, **but it contains the words 'Prepared by Duryea & Co.'**

"That they gladly welcomed the pecuniary advantage from the right to use the name Duryea is true, but that they presented it to the public as the Glen Cove starch is not true, and, while their label does not say as much as it might have said without detriment to themselves, and with the same injury to the complainant, **yet we think that their starch is shown by the label not to be the manufacture of the complainant,** as the successor of the Glen Cove Company, and not to be identified with the former Glen Cove factories as the source of its manufacture."

In every legal aspect the facts in the Duryea case are practically identical with those presented here, although where the facts differ the differences are due to the greater precautions adopted by this defendant's principal than were adopted by the Duryeas. In that case Hiram Duryea had by contract restricted for a limited period his right to use his own name as Samuel Remington's company by the contract of 1886 had done. The sons of Hiram Duryea, like the sons of Samuel Remington, were not manufacturers and had neither good will nor business. The Duryea sons co-operated with others in improving the manufacture of starch, as Franklin Remington co-operated with Z. G. Sholes in the production of an improved typewriter. The Duryea sons, with their associates Sleigh and Krey began business under the arbitrarily selected firm name of "Duryea & Company," preferring it because of their father's reputation to the names "Sleigh, Krey & Company," or "Duryea & Sleigh," although Sleigh and Krey were the experienced members of the firm; while the Remingtons with Mr. Sholes, more considerate of possible trade confusion, adopted for the name of their corporation *both* personal names. In the Duryea case complainant's product was known to the trade as "Duryea's Starch," as in the case at bar complainant's machine is known as "the Remington Typewriter" and "The Remington Standard Typewriter;" but in neither case was the name of complainant's goods adopted nor was attempt made to imitate its signs, circulars or like advertising matter. On the contrary in the Duryea case defendants, omitting all simulation of the picture on complainant's package, adopted a label unlike complainants, as in this case defendant's principal, omitting the "RED SEAL" trade-mark that by use since 1880 has become familiar

to every one acquainted with complainant's machine, has distinctly marked every machine of its manufacture with both its name and address and in conspicuous manner with the fanciful trade-mark "REM-SHO."

In the Duryea case the alleged wrong consisted in the statement upon defendants' package that their starch was "Prepared by Duryea & Company" just as in this case the statement "Remington-Sholes Company, Mfrs. Chicago" upon defendant's machines is asserted to be wrong. Indeed, it would appear from the reported opinions that Duryea & Company did not even give their address upon their packages and that as a matter of fact their starch was manufactured, not by them but by the Sioux City Starch Company. In that case it was strenuously urged that defendants were guilty of wrong doing in that their use of the name "Duryea" was "unaccompanied by any precaution or indication" that might show that their starch was not the starch of complainant, while in this case the record shows that from the very outset defendant and its principal have by circulars, by instructions to agents and dealers and in every reasonable way differentiated its machines from complainant's.

Every fact set forth in the opinion of the Circuit Court in support of its finding that Carver and Franklin Remington were guilty of fraudulent conduct had its counterpart in the facts of the Duryea case, and every word of the opinion condemnatory of these Remingtons might have been spoken with equal propriety of the sons of Hiram Duryea. The only distinction between the Duryea case and that at bar is that in the one case the sons of Hiram Duryea formed a partnership, whereas in the present case the sons of Samuel Remington formed a corporation. But, as we shall show, both partnerships and corporations are in legal effect the same so far as concerns matters of

unfair trade competition; hence if it be true that the Remingtons, as asserted by the Circuit Court, "lost their identity in that of the corporation," then it is equally true that the Duryeas lost their identity in that of the co-partnership, and it is equally true in both cases that the names were used for the benefit of others as well as for themselves.

Is it fair to assume that the court would have regarded the use of the name "Duryea" less "reasonable" if that name had, like the name "Remington" stood for forty years as a synonym of good workmanship in *many* lines of trade? Is it reasonable to suppose that the court would have decided the Duryea case differently if the defendants there, instead of the arbitrarily selected name "Duryea & Company" had traded under the name "Duryea-Sleigh Company," and had marked their packages "prepared by Duryea-Sleigh Company," and had adopted as a trade-mark the fanciful name "DUR-SLE"? Or would the danger of confusion have been less or the decision of this court been different if the defendants there had, like the Remington-Sholes Company, marked their address conspicuously on their product and distributed wherever their starch was sold, circulars calling attention of purchasers to the fact that they were in no manner connected with the complainant? We think not, and plainly the well reasoned decisions in the Duryea case are in direct conflict with that in the case at bar.

*Gilman* v. *Hunnewell,* 122 Mass., 139.

*English et al.* v. *N. Y. Pub. Co.*, 8 Daly (N. Y.), 375.

*Marcus Ward & Co.* v. *Ward et al.*, 15 N. Y. S., 913 (61 Hun., 625).

*Burgess* v. *Burgess,* 3 DeG. M. & G., 896.

*Hardy et al.* v. *Cutter et al.*, 3 O. G., 468.

**Corporation's Right to Use a Surname.**—While the decisions made in the case at bar affirm the broad proposition so fully established by the authorities that an exclusive right cannot exist to the use of a family name, they hold that the use of such a name by a corporation stands upon a different footing. The basis of such ruling is that a corporation, being an artificial body, its organizers have the whole vocabulary to select from, and hence are in duty bound to avoid the selection of such a name as may in any manner interfere with the business of those using like names.

The answer to all of this is that the law as established by the decisions of this court recognizes the right of every man to use his name *reasonably and honestly in every way*, whether such use be effected by him alone or associated with others, either in a firm or corporation; and, on the other hand, it condemns a dishonest use wherever and however practiced.

Inasmuch as the courts have thus invariably recognized the right of a person to use his family name fairly in the business of a firm in which he is honestly engaged, we submit that in reason no distinction can be made between the use of such name in a firm and its use in a corporation, for in both cases the names adopted are alike selected and artificial.

A corporation is in effect but a partnership, and the court will take judicial notice of the fact that of late years it has become a common practice to adopt family names for corporations in precisely the same manner as such names are used for firms; witness, for example, complainant's coporate name, Wyckoff, Seamans & Benedict, and the corporate name, E. Remington & Sons. Indeed, if a common usage can prove the reasonableness of the

adoption of a personal name for a corporation, the court need but notice how many typewriting machines on the market to-day are manufactured by corporations employing such personal names.

Manifestly when one incorporator has an unrestricted legal, moral and commercial right to the use of a family name that has acquired a world-wide reputation for honesty and good workmanship, he can contribute to corporate advancement and prosperity by allowing a company to use his name (where, as in the case at bar, he holds a substantial interest in and is an important member of such a corporation, and is devoting his entire time to the management thereof) in the same way and for precisely the same reason that he could use such name in connection with a partnership business.

Certainly it would be absurd to contend that Messrs. Remington and Sholes were not at liberty to engage in the typewriter business under the firm name of "Remington & Sholes," or associating others with them under the firm name of "Remington, Sholes & Company," and yet if such use of these names be reasonable and permissible it is difficult to perceive why they might not proceed with equal reason and fairness to follow the accepted custom of giving their names to a corporation organized and managed by them.

Let us assume that Remington & Sholes had begun the manufacture of their machine under the partnership name "Remington and Sholes" or "Remington & Company," and finding their capital inadequate, had interested others and incorporated under the same name (just as Wyckoff, Seamans & Benedict, and E. Remington & Sons did). Would they have been guilty of an unreasonable or illegal or fraudulent act in this corporate use of their names? Or would the innocent name of yesterday become a pi-

ratical trespass to-day? The answer to such questions is found in the language of the Court of Appeals for the Second Circuit in *Baker* v. *Baker,* 115 Fed. Rep., 297 (303):

> "As regards the complainant, it is wholly immaterial whether the business is conducted as that of a corporation or that of an individual by the same designation."

In *Celluloid Mfg. Co. Cellonite Mfg. Co.,* 32 Fed. Rep., 94, the learned Justice Bradley said:

> "The fact that both are corporate names is of no consequence in this connection. They are the names by which the parties are known, and are to be dealt with **precisely as if they were the names of private firms or partnerships."**

If a man's use of his name is to be held so limited that he cannot employ it in the ordinary way and for a universaly recognized legitimate purpose in trade, then is set at naught the language of this court in *Brown Chemical Co.* v. *Meyer, supra,* that "a man's name is his own property and he has the SAME right to its use and employment as he has to any other species of property." So, too, if a man is to be denied the right to so use his name, it must be in plain disregard of the limitation imposed by this court in the Singer case where it was held that he need only "adopt such precautions as will protect the property of others and prevent injury to the public, *if by doing so no substantial restriction is imposed on the right of freedom of use."*

In *Monarch* v. *Rosenfeld et al.,* 39 Southwestern Rep., 236 (19 Ky. Law Rep., 14), the following pertinent language was used:

> "Now, it is argued that the court by its judgment limits S. I. Monarch to the use of his name in busi-

ness alone or as a partner, but as a stockholder in the corporation he cannot use his name in the corporate business, its property is in no sense his property, its business is not his. *I do not think that is the meaning of the judgment or opinion.* . . . It is conceded that he can in good faith form a partnership with Rosenfeld & Hirsch in the whiskey business and the firm might use his name. **If the firm can, in the light of the opinion, there is no reason why his name cannot be used in the corporation. . . . Plaintiff can be injured no more in his business by a corporation than he can by such a firm. . . .**

"So, the only question is, if S. I. Monarch can go into business in good faith with any corporation, and use his name in branding its barrels with his name, he can do it with the defendant. In 1 Mor. Priv. Corp. (2nd Ed.) Sect. 1, it is said. 'However, it is essential to a clear understanding of many important branches of the law of corporations to bear in mind distinctly that the existence of a corporation independent of its shareholders is a fiction, and that the rights and duties of an incorporated association are in reality the rights and duties of the persons who compose it, and not of an imaginary being.' I do not doubt but that in certain kinds of corporations a stockholder can authorize the corporation to use his name, and for some purposes its business is his business. **It is known to all—the knowledge is so universal that I think the court can take notice of it—that in these days the practice and custom has grown up among business men that when two or three associate themselves together for the purpose of engaging in any trade or business of any magnitude, instead of forming a partnership to conduct and carry on said business, they form a corporation; they invest in it all of their capital, give to it all of their time and attention. In reality, it is their business. But for fiction of law, such an association would be a partnership.** If the Court of Appeals meant to say that S. I.

Monarch could not use his name in such a corporation, he has, after all, but a limited right to use his name in business. I do not think such is the meaning of the court."

In *American Cereal Co.* v. *Eli Pettijohn Cereal Co.*, 72 Fed., Rep., 903 (affirmed by C. C. A., 76 Fed. Rep., 372) Showalter, C. J., said:

"An injunction was prayed to stop the use by defendant of the name Pettijohn in defendant's corporate name and in the designation of defendant's product, and to stop the use by defendant of the wrapper or any wrapper showing the name Pettijohn. . . . It can hardly be contended that he (Eli Pettijohn) had not then the right to make, or rather to continue to make rolled wheat and to market the same in packages bearing his name in any part of the United States. Neither complainant nor its assigns could by advertising the name Pettijohn prevent Eli Pettijohn from doing this. **It would seem to follow also that he might secure the co-operation of others willing to assist him financially in the business, and that he might with such co-operation form a corporation for the purpose of carrying on such business;** *provided always he should take reasonable precautions to distinguish the business thus carried on by him from that of a competitor rightfully using the name Pettijohn.*"

In *Hazelton Boiler Co.* v. *Hazelton Tripod Boiler Co.*, 142 Ill. Sup., 494, the court recognized the right of Hazelton to give his name to the defendant corporation, and in so doing said:

"If any confusion has occurred it has arisen from the similarity of the corporate names, and not from any attempts on the part of the defendants to deceive. . . . If injury results to the complainant from such cause, it is *damnum absque injuria*." (P. 509.)

In *Scott Stamp & Coin Co. Limited*, v. *J. W. Scott Co., Limited*, 15 N. Y. S., 325 (58 N. Y. Super. Ct., 379), the facts were as follows: J. W. Scott had been a most prominent dealer in stamps, coins, etc., when by a written contract he assigned to another, and the business was continued for some time under the name "Scott & Co." or "J. W. Scott & Co." By agreement, complainant corporation was organized and defendant took stock therein in part payment. The contract provided that Scott should not engage in the same business for two years, nor while he held stock in the complainant corporation. About three years after the date of the contract, Scott having sold his stock, again engaged in business under the name "J. W. Scott Co., Limited." The court, after a careful review of the authorities, found that defendant had a full right to use its name, and in this connection said:

> **"Inasmuch, therefore, as J. W. Scott, after the lapse of two years, had the right to engage in a similar business under his own name, he had a right to give his name to the defendant corporation,** and the mere fact that mistakes are made by customers, and that confusion arises, does not give to the plaintiff any right to an injunction. *Employers' Etc., Corp.* v. *Employers' Etc., Ins. Co.*, 10 N. Y. Supp., 845; *Blakslee Manuf'g Co.* v. *Blakslee's Sons Iron-Works*, decided July 23, 1887. The opinion of Barrett, J., in the case last referred to, makes this so clear that it is not necessary to do more than reiterate his language, which is directly applicable here. He says: 'I see no reason to believe that Mr. E. G. Blakslee, in forming the defendant corporation, sought to deceive the public, or to wrong the plaintiffs. The intention has been legitimate, namely, to disclose the truth, and not to conceal it. Mr. Blakslee had a perfect right to let the public know that, although his name was being

used as part of plaintiff's corporate title, he had no connection with the plaintiff. He and his sons had also a right to transact lawful business under their own names, so put forward as to indicate the simple truth and not to deceive any one. . . . **If the sons, with their father, could do business lawfully under the defendant's name, there is no good reason why that same name given to a corporation should be unlawful. It is still their own name applied as the law permits, and, so long as there is no deceit or fraud, they cannot be restrained from transacting, in what is substantially their own names, their lawful business.**' The case of *Holmes* v. *Manufacturing Co.*, 37 Conn., 278, is no authority to the contrary." (Pp. 326-327.)

In *Employers' Etc. Co.* v. *Employers' Etc. Co.*, 10 N. Y. S., 845 (61 Hun., 552), it was said:

> "There is no difference in principle between the use of an individual or copartnership name and that of a corporate name."

In *Columbia Mill Co.* v. *Alcorn*, 150 U. S., 460, this court, after reviewing various cases in which it was held that geographical and like terms could not be exclusively appropriated, recognized that the same principles of law govern the use of all names that are *publici juris*. When therefore, this court, in *Goodyear Co.* v. *Goodyear Rubber Co.*, *supra*, held that the name "Goodyear Rubber Co." was incapable of exclusive appropriation, the fact that the name was descriptive of an article instead of being descriptive of a class or family took nothing from the force or application of the rule. And when the court there said "nor will the incorporation of a company in the name of an article of commerce, without other specification, create any exclusive right to the use of the name," it made plain its view that a corporation had no greater right than an

individual to usurp a descriptive name. The reason, quoted by this court from the leading case of *Canal Co.* v. *Clark*, viz., "it would greatly embarass trade and secure exclusive rights to individuals in that which is the common right of many," applies as fully to family names as to others in which many enjoy a common right. This Goodyear Company case is the leading case in which this court has had occasion to pass upon the attempt of one corporation to enjoin another from using in its corporate title a name to which others had a common right, and the unmistakable language in which it condemns such attempt should leave little doubt in the minds of any one as to the disposition that should be made of a case like that at bar, where a corporation is seeking to monopolize the use of a family name.

In the light of the foregoing authorities the Circuit Court was plainly in error when, in condemning the giving of the names of Messrs. Remington and Sholes to defendant's principal, it said: "This was not a legitimate exercise of the natural right to use their own name in their own business; but was an attempt to exercise a fictitious right to use the name in, to a great part, other's business."

The Circuit Court failed to perceive the fallacy of the argument of complainant's counsel in urging that Messrs. Remington and Sholes were not using their names in *their* business, but were giving them to the business of another. The language used in *Monarch* v. *Rosenfeld supra*, applies precisely to the facts of this case and makes plain the fact that when men invest their all in a corporation and give to it their whole time and attention "in reality it is THEIR business." In like manner also the courts in the Pettijohn case, *supra*, and in the Scott Stamp

case, *supra,* recognized the fact that the corporate business is the business of each person having his capital and time devoted thereto. With all their capital, time and labor given to the corporation organized by them it is but playing with words to say that the business of such company was not their business although others were interested therein.

A somewhat similar technical quibble was presented to the court in the Duryea case, *supra,* where is was urged as an indication of fraud on the part of the defendants that they marked their starch "prepared by Duryea & Co.," whereas it was in fact manufactured by the Sioux City Starch Company. In view of the fact that the starch was made under the supervision of Duryea & Co. this court held the statement to be in substance true, if not literally so.

In the recent work Hopkins' Unfair Trade (Sec. 54, p. 110), the author, under the title "Corporate Names," after lamenting that "upon this subject the courts are hopelessly confused in their phraseology," thus expresses his view of the law (p. 112): "It is a self-evident proposition that a generic word embodied in a corporate name is not entitled to protection in equity." And in support of this view it directs attention to *Goodyear Co.* v. *Goodyear Co., supra,* and other cases. Continuing, the author says (p. 113):

> "In conclusion there is no practical difference so far as equitable rights and remedies are concerned, between corporate names and the names of a partnership or an individual."

**Lack of Necessity for Using Personal Name No Test.**—It is true that in some cases the courts in condemning the *unreasonable* use of a name have emphasized the fact that such use was "unnecessary;" but, strictly

speaking, the *necessity* for the use of a name as a test of the right to its use is without warrant in the decisions of this court or in common sense. The fact that a man may always readily conceal his identity under a corporate or a firm name proves the lack of *necessity* for such use in any case. The law simply requires that he shall enjoy the right to the use of his name as he would enjoy any other species of property—in a fair and reasonable manner. He is no more expected to abandon such use or to unreasonably restrict it than he would be expected to abandon the use of his chimney (in the illustration used by Justice Brown) and run a stovepipe through another part of his house merely because the smoke of his chimney was offensive to his neighbor.

In the leading English case of *Turton & Sons* v. *Turton & Sons*, 42 Ch. D., 128, plaintiffs had carried on the iron business for many years as "Thomas Turton & Sons." Defendant began the same business as John Turton, then traded as John Turton & Co., and finally took in his sons and changed the firm name to "John Turton & Sons." The evidence showed that some confusion had arisen and that there was every probability that the public would be "excessively misled by the similarity of names," and plaintiffs contended that there was no necessity of defendants using such name. In refusing the injunction, Lord Esher said (p. 135):

> "Therefore the proposition (*i. e.*, complainants' contention) goes to this length; That if a man is in business and has so carried on his business that his name has become a value in the market, another man must not use his own name. If that other man comes and carries on business he must discard his own name and take a false one. The proposition seems to me so monstrous that the statement of it carries its own refutation."

In *Continental Ins. Co.* v. *Continental Ass'n.*, 96 Fed., 846 (affirmed by C. C. A., 101 Fed., 255), the court said:

> "Counsel for complainant contends that it would have been a simple and easy matter for the incorporators of the defendant company to have selected a distinguishing name for it without having chosen a term already appropriated by a corporation engaged in a like business. This is true, and it is also true that the defendant might not suffer any serious pecuniary loss by the granting of the injunction prayed for in this cause; yet it is the opinion of the court that the incorporators of complainant by appropriating a generic term, purely descriptive, and in general and prevalent use, and in failing either to fix upon an arbitrary term, or to draw upon the realms of fancy for a name, or to select one indicative of the origin or ownership of the business about to be launched, failed to vest complainant with a distinguishing appellation, the exclusive right to the use of which the courts could declare to be in complainant."

*Meriden Co.* v. *Parker*, 39 Conn. 450.

*S. Chivers & Sons* v. *S. Chivers & Co., Ld.*, 25 Trade-Mark, Rec., 289.

In the light of the authorities and of the history of the Remington-Sholes Company it is for this court to determine, not whether Messrs. Remington and Sholes could have *abandoned* the use of their names, but whether under all circumstances the use which they made of their names was a *reasonable* and a fair one.

We therefore submit that the facts of this case and the law applicable thereto must satisfy this court upon the following points:

I. It was *reasonable* that Remington and Sholes should form a corporation for the manufacture of their typewriter (*a*) because alone they had not the capital necessary to manufacture it; (*b*) because corporate man-

agement is regarded as the most effective form of business enterprise; (*c*) because all other typewriters are made by corporations.

II. It was *reasonable* that they should adopt the name "Remington-Sholes" for their machine because both Remington and Sholes had labored incessantly for months in the production of the machine, Sholes contributing his inventive genius and Remington, after giving up all other work, furnishing not only the funds to effect the reconstruction of the machine and its exploiting, but conferring with Sholes as to every detail of change made therein.

III. It was *reasonable* that the corporation created to make this machine should bear the names of both Remington and Sholes (*a*) because it was to manufacture a machine that was distinctly the product of and owed its existence to both; (*b*) because it is the almost universal custom in the typewriter trade to identify by the same name the corporation and the machine that it manufactures; (*c*) because Sholes' father having invented the pioneer typewriter, which the company whereof Remington's father was president gave to the world, the public would be interested in the coming together of these sons; (*d*) because the family name of Remington had a world-wide reputation in many lines of trade older than and distinct from the good-will of the typewriter business; (*e*) because the public is attracted by family reputation in trade as it is in the professions; (*f*) because the courts, and the public common sense, recognize the value of a father's good name and a son's right to avail himself of it; (*g*) because having a right to use their names like ordinary property they had a right to bestow such names in the usual way upon a corporation of their own crea-

tion, in which they held a large part of the stock and to which all their time and energies were devoted.

IV. It was *reasonable* that the reorganized Remington-Sholes Company should adopt and continue to bear the name of the old company, (*a*) because it was the successor to the old company; (*b*) because by the retention of the name under which its predecessors had advertised the machine it could hope to better retain the trade; (*c*) because the highest courts of the German Empire in a suit instituted by this complainant had emphatically declared that the name "Remington-Sholes" was lawfully and properly used.

The answer to the test question deducible from the decision of this court in the Singer case, viz., "Is the use of a personal name as PART of a corporate name such a use as is calculated to produce an injury to another beyond that which results from the similarity of the name," would seem too plain to admit of argument, for obviously the addition of the name "Sholes" to the name "Remington" must tend to differentiate the names "Remington-Sholes" and the name "Remington-Sholes Company" from the alleged trade-mark "Remington" or any of complainant's pseudonyms, and it is equally true that the use of the name "Remington-Sholes Company" is less calculated to produce trade confusion than would have been the use of Mr. Remington's name alone, or in such combination as "Remington & Company."

**Complainant's Relief Dependent Upon Its Right to the Name Remington, However Used.**—The record shows that in this case complainant's claim to the relief prayed for hinges solely upon its alleged exclusive right to the name "Remington" in every conceivable colocation and environment, *first*, because

there is no other point of similarity between its trade-mark or any of its many pseudonyms and the name "Remington-Sholes;" and, *second,* because the name "Remington," and it alone, is alleged to have given rise to confusion in trade; and to the use of the name alone is due the only instances in which, through mistake (not deception), defendant's machines have been taken for complainant's. Yet the authorities are conclusive in holding that something more than the mere use of a surname —some piracy of the complainant's arbitrary marks— must be found before a defendant, having a right to use such name, can be convicted of fraud.

In *Harson* v. *Halkyard et al.,* 46 At. Rep., 271 (May, 1900), the Supreme Court of Rhode Island used the following pertinent language, viz.:

> "No person can acquire a right to use his surname as a trade-mark or trade-name, to the exclusion of others bearing the same surname. Unless, therefore, the signs, labels, and other advertisements of the respondents are such, independently of the use of the name 'Harson' as to deceive the public into the belief that they are buying the goods of the complainant when they are buying the goods of the respondents, the complainant has no ground of complaint. The principal point of resemblance between the signs, labels, and advertisements of the complainant and those of the respondents consists in the prominence given to the name 'Harson.' In view of the fact that the respondent Harson has the right to use that name, we do not think that the complainant is entitled to complain of the mere prominence given to it; the signs, labels, and advertisements being quite unlike in other respects. Though the testimony shows that in some instances persons have confounded the places of business of the complainant and the respondents, the confusion appears to have been due rather to the name 'Harson,' than to any resemblance between the signs, labels, and advertise-

ments. Our conclusion is, therefore, that the bill should be dismissed."

*Carmichael* v. *Latimer*, 11 R. I., 395.

If complainant can maintain its present action, then with equal right it might ask this court to enjoin the Remington Arms Company, of Ilion, the Remington Machine Company, of Wilmington, or the Remington & Sherman Company, of Philadelphia—all going concerns —from ever announcing the fact that they were engaged in the typewriter business, if they should ever see fit to enter it. Certainly it cannot be denied that these concerns have the right to manufacture typewriters, but if the decision of the lower court in this case is law, then it would be improper and fraudulent for these parties to place upon their machines inscriptions like the following:

**Remington Arms Company, Mfrs., Ilion;**
**Remington & Sherman Company, Mfrs., Philadelphia;**
**Remington Machine Company, Mfrs., Wilmington.**

And if the Remington & Sherman Company should be bold enough to adopt as a trade-mark for its machine the fanciful abbreviation "REM-SHER," this, too, according to complainant's contention, would be a fraudulent trespass upon complainant's rights.

So also, with equal reason complainant relying, as it must, upon an exclusive right to use the name "Remington" in every conceivable manner, could demand an injunction against any one who might attempt to manufacture and properly designate the early typewriting machines upon which the patents have expired and which were admittedly designated and known as "Remington" machines. (R. 92.)

*Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169.

*Holzapfels Composition Co., Lim.*, v. *Rathjens American Composition Co.*, 20 Sup. Ct. Rep., 6.
*Centaur* v. *Marshall et al.*, 97 Fed. Rep., 785.

**Name "Remington-Sholes Company" is Not in Imitation of Any Name to Which Complainant Asserts a Right and is Not Calculated to Create Confusion.**—Not only does the record show an entire absence of any fraudulent intent upon the part of the organizers of the Remington-Sholes Company in the adoption of the name Remington-Sholes as part of its corporate title, but it also shows that the selection of such name was not in the way of imitation, intentional or otherwise, of the name of any other corporation. The "REMINGTON STANDARD TYPEWRITER MANUFACTURING COMPANY" had long since passed away, although were it still in existence it could have no ground of complaint. The "Z. G. Sholes Company" was a still-born organization. The "REMINGTON ARMS COMPANY" was engaged in the manufacture of the "Remington Rifle" and the "Remington Bicycle." The "REMINGTON & SHERMAN CO.," of Philadelphia, and the "REMINGTON MACHINE WORKS," of Wilmington, were in other lines of trade. The name of Sholes briefly associated with the original typewriter had twenty years before been abandoned by complainant's predecessors. (R. 64; 200.)

The fact that Wyckoff, Seamans & Benedict has "frequently" (as the amended bill alleges) been designated by the public as the "Remington Company," the "Remington Typewriter Company," the "Remington people," the "Remingtons," etc., etc., will be pressed upon the court, and it will be urged that in the adoption of its corporate name, the incorporators of the Remington-Sholes Com-

pany and its predecessors had in mind a fraudulent purpose to imitate such misnomers of complainant. It is not denied that for brevity and convenience complainant is often designated by the public by these and like terms, but it will scarcely be pretended that any of such is its proper or general appellation, or the one under which, prior to the decree in this case, its business was transacted. The voluminous advertising matter in complainant's record conclusively proves the contrary. See, for example, "Complainant's Exhibit St. Joseph Herald" (R. 959), where under date of April 25, 1899, complainant's machine is advertised as "REMINGTON STANDARD TYPEWRITER, WYCKOFF, SEAMANS and BENEDICT."

Nor does the fact that for convenience the public frequently uses a shorter title for complainant instead of its true name indicate that the public is ignorant of such name. It is plainly inconceivable that a name so universally and conspicuously advertised, as complainant's has been, in newspapers and periodicals, upon all its catalogues, letter-heads, signs and machines, should escape the public mind. An acquaintance—much less a familiarity—with complainant's machine without a knowledge of complainant's true name is a simple impossibility.

We submit that all fraudulent attempt at imitation is clearly disproved by the fact that the Remingtons and their associates, in naming their company, avoided using the name "Remington & Company" or the like and adopted the names of *both* persons Remington and Sholes, who had made its existence possible. In so doing they produced a name that presented a radically different sound to the ear and appearance to the eye from that of

any of the various pseudonyms of complainant. In this respect, therefore, the case at bar is plainly distinguishable from those cases in which a complainant has uniformly traded under a name other than its own, and in which a defendant's organizer, with knowledge of that fact, by reason of his former connection with such complainant, has given to a defendant company a name *idem sonans* with complainant's trade-name, manifestly without other purpose than that of stealing away complainant's trade. Such, for example, was the case of *Gray* v. *Taper Sleeve Pulley Works,* 16 Fed. Rep., 436, in which defendant, formerly associated with complainant, not only adopted for its corporate name the identical name under which complainant for years had traded, but by piracy of complainant's circulars, advertisements, etc., created much actual confusion in the trade.

A like difference in facts also distinguishes the case at bar from that of *Tuerk Hydraulic Co.* v. *F. W. Tuerk, Jr., et al.,* 36 N. Y. S., p. 384. In that case the plaintiff had become known as the "Tuerk Water Motor Co." Defendant F. W. Tuerk, who had long been an employee of plaintiff and had prepared its catalogues, its fanciful advertisements, etc., having severed his connection, formed a partnership with others under the style "The Tuerk Water Meter Co.," and engaged in business in the same city. The record in the Tuerk case showed that defendants not only manufactured a water motor like complainant's, but designated it as "Turek's New Water Motor," and copied the circulars, illustrations, etc., employed by complainant. The fraud that characterized the Tuerk case is manifestly absent from the case at bar.

In *Meneely* v. *Meneely, supra,* the point was made, as in the case at bar, that plaintiffs were known by various

different names involving the name "Meneely," but the court recognized the fact that the name **Meneely & Kimberly,** which involved the use of **two surnames,** was radically different from any of plaintiff's pseudonyms, in which the *single* name Meneely appeared. In this connection it was said:

> "In the cases cited, the degree of similarity and the imitations were far more apparent and distinct than in the case at bar, and **it is worthy of observation and special attention, that here the defendants only employed the surname of one of them, which one alone is of the same character as the plaintiffs', or bears any similarity to their name or any of the various cognomens, some forty in all, by which they have been designated by their numerous business correspondents. It would be a far-reaching extension of the powers of a court of equity, to grant an injunction which would protect the plaintiffs in the use of all the different names, by which they have been in the habit of being addressed by their customers. There is no adjudged case, which has protected trademarks to such extent, or ever struck out the name of a single member of a firm, because it was similar to another engaged in the same business. The partnership name here, was 'Meneely & Kimberly' and the plaintiffs' firm name, 'F. A. & G. R. Meneely.' And there is no such resemblance as would of itself either tend to deceive the public, or indicate a fraudulent purpose. The name of 'Meneely' could not have been used with apparently less design to commit a fraud, unless Kimberly's name was placed ahead of it, which I think was not required."**

It is simply impossible to deny the force or the pertinency of this language of the New York Court of Appeals. It is consonant alike with reason, with common sense and with the accepted methods of the public in dis-

tinguishing persons, firms and corporations in the world of trade. The public does not understand that the business of "Jones and Brown" is identical with that of any two individuals of such names, however prominent the names may have become in a particular line of trade. Nor would a corporation bearing, for example, the name "Westinghouse & Smith Co." be regarded as one and the same with the Westinghouse Co., although it might be surmised that possibly the same Mr. Westinghouse had an interest in both concerns or that some other Westinghouse was availing himself of the family reputation. But while in such cases the reputation of Westinghouse might attract the public eye to both concerns, it alone could not enable the trespass of one upon the goodwill of the other or cause any unlawful confusion as to the identity of the two.

The public views a corporation bearing a personal name or names in precisely the same manner that it does a firm. If there be but a single personal name in the corporate title the public identifies the corporation by it, but if there be several personal names then all serve as a means of identification. Is it reasonable to suppose that the public would regard "E. Remington & Sons" as identical with a firm bearing the name "Remington & Sholes"? The very absurdity of this question suggests its only answer, and yet there is as much reason to assume danger of confusion in such case as in the case at bar.

In *Hygeia etc., Co.* v. *N. Y. Hygeia Ice Co.*, 140 N. Y., 94, the court said:

> "Courts of equity must in such cases assume that the public will use reasonable intelligence and discrimination with reference to the names of corporations with which they are dealing or intend to deal, the same as in cases of individuals bearing the same or similar names."

Not a single one of the many witnesses on behalf of complainant has been heard to assert that he ever mistook the name Remington-Sholes Company for complainant's name or for any of the numerous pseudonyms by which it is often designated by the public, although if proof of such mistake had been made it could not deprive the Remington-Sholes Company of the right to use its corporate name, since, as is shown, such name was adopted in fair and honest manner.

**Comparison of Names is Best Test of Probable Deception.**—Inasmuch as the record in this case fails to show any instances of actual deception (although the testimony covered a period of several years), the court is left to determine for itself whether there is any such reasonable probability of deception occurring as will warrant the extraordinary remedy granted by the lower court. In Sebastian on Trade-Marks (4th Ed.), p. 128, it is said:

> " It is not sufficient for the plaintiff to produce evidence tending to show that in the opinion of the witnesses deception may occur; he has to convince the court or jury that there is such reasonable probability of deception as to justify interference with the defendant; and if he can not allege and prove that the public are deceived, or that there is reasonable probability of deception, he has no right to interfere with the use of the mark by others. . . . . **If it is shown that both marks have been used for a number of years and no case of actual deception can be produced, it is strong to show that deception is not probable."**

Certainly, a comparison of the name Remington-Sholes Company with the name Wyckoff, Seamans & Benedict, or the name "Remington Typewriter Company," or "Remington People," or the like, must fail to show that

"striking similarity" that must take the place of proof of actual deception in justifying a court to issue its injunction. The decisions are uniform in declaring that a comparison by the court itself is the best test as to the probabilty of the public being misled or deceived by alleged similarities. Thus, in *Liggett & Meyers Tobacco Co.* v. *Finzer,* 128 U. S., 182, the Supreme Court, after comparing the marks of complainant and defendant, said:

> "The judgment of the eye upon the two is more satisfactory than evidence from any other source as to the possibility of parties being misled so as to take one tobacco for the other; and this judgment is against any such possibility. Seeing in such cases is believing; existing differences being at once observed and remaining on the mind of the observer."

In *Lorillard* v. *Peper,* 86 Fed. Rep., 956 (C. C. A.), the court, after stating that there was testimony showing that the resemblance between the packages of complainant and defendant was calculated to mislead and in fact did mislead, said, in speaking by Mr. Justice Brewer:

> "We cannot surrender our own judgment in this matter because others may be of a different opinion, or because it happens, in isolated instances, that some purchaser was so careless as not to detect the difference. It may well be that where many sales were made, some individuals, not particularly attentive, may have purchased the defendant's, supposing they were purchasing the plaintiff's package. Such facts will happen in the ordinary course of business no matter how great the differences; and the fact that they do happen, while it is not to be ignored, is not to outweigh the evidence which comes from a personal inspection of the packages and labels."

*Consolidated F. J. Co.* v. *Thomas,* 6 Fed. Cases, 341 (2 N. J. Law J., 338).

*Cal. Fig. Syrup Co.* v. *Taylor Drug Co.,* 14 R. P. C., 564.

What meaning do the inscriptions "REM-SHO" and "REMINGTON-SHOLES COMPANY, MFRS., CHICAGO" convey to the public mind? What meaning comes to the mind of this court as it reads them? Obviously the name "REM-SHO" is understood as a fanciful name designed as a trade-mark to stick in the public memory, just as the familiar name "ADLAKE" (abbreviated from Adams & Westlake) is adopted for cameras, or the name "Edi-Swan" is adopted for electric lamps. The words "Remington-Sholes Company, Mfrs. Chicago" unmistakably announce the fact that the machine is manufactured by the Remington-Sholes Company of Chicago, and are incapable of any other meaning.

In considering a corporate name comprising one or more personal names, the impression is different from that conveyed, under certain circumstances, by a corporate name involving geographical or purely fanciful names, such as "The Home & Colonial Assurance Company," or "The London & Westminster Assurance Company," or "North Cheshire & Manchester Brewery Company." In such latter cases the public may assume that the corporation having the double name is a consolidation of two corporations, but even in such cases the courts have frequently refused to grant injunctions against defendants bearing the double names.

*Merchant's Banking Co. of London* v. *Merchant's Joint Stock Bank*, L. R. 9, Ch. Div. 560.

*London & Provincial Law Assurance Society* v. *London & Provincial Joint Stock Life Asssurance Co.*, 17 L. J. (Ch.), 37.

*London Assurance* v. *London & Westminster Assurance Corp. Ltd.*, 32 L. J. (Ch.), 664.

*Colonial Life Assurance Co.* v. *Home & Colonial Assurance Co., Ltd.*, 33 Beav., 548.

In Kerly on Trade Marks, Second Edition, p. 510, this distinction between the use of personal and fanciful names is recognized, the author there saying with respect to personal names:

> "The case is therefore readily distinguishable from cases where a 'fancy name,' which is not descriptive of actual facts in ordinary language, is appropriated."

The record fails to show that the Remington-Sholes Company ever used its corporate name otherwise than as an entirety (except as its machines are marked "Rem-Sho") or that it ever in any manner tried to conceal or disguise its identity. On the contrary, the record is full in showing that this corporate name appears upon all its signs, its catalogues and its advertisements, as well as upon its machines.

While the appearance of the name "Remington" in the corporate name of the Remington-Sholes Company may tempt the curiosity of some persons to inquire as to the existence of a connection between such company and complainant, the use of the name "Sholes" in such corporate name is a distinction so prominent that no reasonable person can fail to recognize it, and, if vested with common intelligence, to understand its significance.

*Yost Typewriter Co.* v. *Typewriter Exchange Co.*, R. P. C., Vol. 19, p. 423.

*Aerators Ltd.* v. *Tollit et al.*, R. P. C., Vol. 19, p. 419.

*Heintz* v. *Lutz*, 146 Pa. St., 592.

## THE CROSS-PETITION FOR CERTIORARI.

Complainant's cross-petition raises the question as to whether or not the Circuit Court of Appeals was in error in its finding that "the arbitrary name 'REM-SHO,' however, does not seem to us to be sufficiently like 'REMINGTON' to be by itself a reasonable cause of confusion."

In thus summarily disposing of complainant's contention, the Court of Appeals makes plain how frivolous it was regarded.

**The Name Rem-Sho a Valid Trade-Mark and No Infringement of Complainant's Rights.**—The Record shows (R. 1485) that on October 19, 1897, certificate of registration No. 30,719 was issued to the "Remington-Sholes Company" for the trade-mark "Rem-Sho." The declaration accompanying said registration asserts that the mark was used since about the first day of July, A. D. 1897, and the testimony shows (R. 1104) that the adoption of this name Rem-Sho occurred at a somewhat earlier date. The word "Rem-Sho" being manifestly an arbitrary or fanciful word, is a valid trade-mark. Its registration, therefore, is *prima facie* evidence of its ownership and of the fact that it is no infringement of the registered name "Remington," or of any other registered mark.

Browne on Trade-Marks, Secs. 337 and 338.

*Sterling Remedy Co.* v. *Eureka C. & Manfg. Co.*, 80 Fed. Rep., 105 (C. C. A.).

Notwithstanding the fact that the name "REM-SHO" was in use for more than a year before this suit was brought and for several years before the testimony was

closed (and complainant attempted to prove instances of confusion up to the time of closing its proof), the record is utterly devoid of any instance whatever in which the name "REM-SHO" has caused the slightest trade confusion, much less can it be said to show any case of actual deception by the use of such name.

Naturally, when the name of the machine was changed from "Remington-Sholes" to "Rem-Sho" the public did not at once accustom itself to the new name, and those who had long been familiar with the old name (the writer of this brief, for example) did not at once adapt themselves to the change. This is noted by complainant's witness McKay, and it is too evident to permit of discussion. The fact remains, however, as testified to by complainant's witness Goodhue, an independent dealer (R. 565), that the machine of the Remington-Sholes Company is today commonly known as the Rem-Sho.

To those familiar with the name Remington-Sholes Company or having such name before them, the name Rem-Sho might, without any exercise of extraordinary cleverness, be considered to be an abbreviation of the name Remington-Sholes. Plainly, however this does not detract from the fact that it is a fanciful name, although coined from the longer one. As some of the witnesses aptly express it, it is a "nick-name" or "fancy name" (R. 1044; 1093; 1230), notwithstanding the fact that it is an abbreviation. In the absence of the name Remington-Sholes Company, or to one ignorant thereof, the name Rem-Sho is obviously meaningless. It might be understood as an abbreviation (if regarded as an abbreviation at all) of "Rembrandt-Showalter" or a dozen other familiar names.

Apparently, complainant's counsel would have this court reason as follows: Remington-Sholes is an infringement

of the name Remington; the public understands Rem-Sho to be an abbreviation of Remington-Sholes; *ergo*, the public understands Rem-Sho to mean Remington. The bare statement of this proposition, false in all its premises, would seem adequate to prove its absurdity. The same mental act that converts "Rem-Sho" into "Remington-Sholes" brings at once to mind BOTH names—"Remington" AND "Sholes"—and with both names thus before him there can be no possible excuse for any one confounding these two names with the single name Remington.

In *Amoskeag Manfg. Co.* v. *Trainer*, 101 U. S., 51 (56), this court had before it a case in which both the complainant and defendant used the letters "A. C. A." upon ticking, but the labels of defendants were held not to trespass upon complainants, the court saying:

> "As it was pertinently observed in the case of Sandford, if the purchasers of the ticking read the name of the company, the letters can give no additional information, even if it be admitted that they are intended to indicate the name of the company. And if they do not read the name as printed, the letters are unintelligible."
>
> *Proctor & Gamble Co.* v. *Globe Refining Co.*, 92 Fed. Rep., 357 (C. C. A.).
>
> *Potter B. & C. Corp.* v. *Pasfield Soap Co.*, 106 Fed. Rep., 914.
>
> *Kann et al.* v. *Diamond Steel Co. et al.*, 89 Fed. Rep., 706 (C. C. A.).

The case at bar is, therefore, plainly distinguished from the class of cases in which defendants have adopted trade-names so nearly *idem sonans* with complainant's that the purchasing public, using ordinary care, would mistake the name used by defendant for that of complainant.

Such, for example, was the case of *Burnett* v. *Phalon*, 5 Ab. Pr. (N. S.), 212, where complainant used the name "Cocoaine," while defendant used the name "Cocoine." The same is true also of the case of *Valentine* v. *Valentine*, R. P. C., Vol. 17, p. 673, where complainant marked its beef extract with the name "Valentine," while defendant marked its extract with the name "Valtine."

Regarding the similarity of such names, Collins, L. J., said:

> "Speaking for myself I frankly admit that when I saw the word 'Valtine' I thought it was 'Valentine' and I believe nine people out of ten would think it was Valentine, seeing 'Valtine' in large letters and 'Valentine' extract at the bottom."

Manifestly, such cases have no bearing upon a case like that at bar, where the fanciful name used by defendant presents a totally different appearance to the eye and sound to the ear from the name employed by complainant.

Whether the public upon seeing the name "Rem-Sho" recognizes it as an abbreviation is of no moment, because the primary signification of the word to every one must obviously be that of a coined or fanciful name. As one of the witnesses has observed, the word "Rem-Sho" is an abbreviation the same as the word "Adlake" (the familiar name of a well-known camera) is an abbrevation of the name of its makers, the Adams & Westlake Company (R. 1044); but surely there can be no question as to the fanciful character of such word. The authorities are conclusive to the point that the mere suggestiveness of a fancy name like "Rem-Sho" cannot detract from its character as a distinctive and valid trade-mark.

Browne on Trade-Marks, Sec. 273.
*Davis* v. *Kendall*, 2 R. I., 566.
*Holt Co.* v. *Wadsworth*, 41 Fed. Rep., 34.
Am. and Eng. Ency., Vol. 26, p. 282.

**The Syllable Rem.**—Considerable testimony was taken and many exhibits introduced on behalf of complainant for the purpose of showing that the abbreviation "Rem" has been frequently used to designate complainant's machine; and certain of the witnesses have testified that they have heard typewriter salesmen and others *engaged in the trade* use the abbreviation "Rem" even when speaking of complainant's machine. Thus the syllable "Rem" is often used in condensed newspaper advertisements of persons applying for positions as operators (R. 274), and in precisely the same manner that the abbreviations "Sm. P." is used for Smith-Premier, "Calig." for Caligraph, "Dens." for Densmore, etc. (R. 135 and R. 424.) The testimony also shows that typewriter operators in applying for positions at complainant's office sometimes used the abbreviations "Rem," "Dens," "Sm. P.," "Calig.," etc., in writing their answers to the question "What machine do you use?" (R. 121 and 135.)

The record conclusively shows, however, that while the syllable "Rem" is sometimes used by operators and salesmen (R. 190 and R. 1428) it is *never* used by customers or the public in speaking of complainant's machine. (R. 1431.) Thus Mr. Baldwin, when asked whether he ever heard the Remington Standard typewriter called "a Rem," answers, "No, sir, I never did, although I sold the machine for several years." (R. 1016.) Complainant's witness Crean (R. 120) when asked, "How have such machines (*i. e.*, complainant's) generally been known and designated among users of typewriting machines and by purchasers thereof to your knowledge?" answers, "I have never known them to have been called or designated by any other name than Remington machines," etc. Complainant's witness McNally says the same. (R. 321.)

Complainant caused various of its employees to canvass large cities throughout the country, and for this purpose furnished them with the names of parties of whom the question was asked, "What typewriting machine do you use?" These lists, introduced in evidence, show that out of the hundreds of inquiries made there *was not a single instance* in which the user of complainant's machine designated it as "a Rem." (R. 166; 203; 334.) It is true that complainant has spread upon the record (R. 148-158) a long list of names of Philadelphia users of typewriting machines, and the witness Johnston, who produced *a typewritten copy* of his list of these names, testified in his direct examination that certain of the parties in speaking of the complainant's machine used the abbreviation Rem. Upon cross-examination (R. 160) this witness admitted that he was unable to state whether the parties used the abbreviations or not, and when his *original* memorandum-book was produced (R. 163) it showed that the typewritten list was incorrect, as the witness admitted (R. 164), and that the abbreviation "Rem" was not used in a single instance. The testimony of Johnston and his list, while proving nothing for complainant, furnishes an instance of the unfairness that defendant has encountered in the testimony in this case.

Complainant's pretended exclusive right to use the term "Rem" apparently originated in the fertile brain of its detective witness Crean. Upon one of the memorandum blanks produced by him (R. 137) he wrote, "Why don't we own the word Rem too? Crean;" and this witness, with his readiness to assert anything that may be helpful to his employer, states as of his own knowledge that the use of the abbreviation Rem by defendant had misled prospective buyers of machines in many instances. (R. 137.) Not only does the re-cross examination of

this witness clearly indicate that his statement is devoid of truth, but, as we shall presently show, the testimony of the witness Downs and the statement of the witness Johnston (the instances referred to in Crean's examination) clearly disprove his allegation. Defendant's witness White, the manager of the F. S. Webster Company, and who has handled both the Remington and the Rem-Sho machines for years, states that he never heard a customer use the term "Rem" (R. 1431), and that as the result of his experience he has never found any confusion to arise between complainant's machines and that of the Remington-Sholes Company by reason of the fact that the term "Rem" is occasionally used among salesmen or in correspondence as a designation for complainant's machine. (R. 1432.)

We are confident that this court will not disturb the unanimous finding of the Circuit Court of Appeals affirming defendant's right to use the fanciful name "REM-SHO," particularly as complainant has failed utterly to prove any confusion occurring from the use of such name.

**Cases Distinguished.** In considering the cases relied upon by complainant to support its bill, this court will notice that every prior case, in which the use of a personal name has met with judicial condemnation, differs from the case at bar in some of the following vital particulars:

(*a*) In this case defendant has used two names—Remington and Sholes—thus distinguishing its corporate name "Remington-Sholes Company" both by appearance and sound from the name of complainant and from its pseudonyms. In prior cases defendants have employed the *single* surname by which the complainants therein were known to the trade.

(*b*) In prior cases defendants have adopted the single surname peculiar to complainants for the purpose of palming off defendants' wares for those of complainants' manufacture. In this case, as the unrefuted testimony of complainant's own witness, Mr. Sholes, shows (Rec. 424) the name Remington-Sholes was adopted to avail of the family reputation of these names, and there was no purpose of confusing defendant's machines with those of complainant. (R. 439-440.)

(*c*) In prior cases the name employed by defendants has been one devoid of any *general family reputation* and known only in the complainant's particular line of manufacture. In the case at bar, on the contrary, the name Remington has been famous the world over since long prior to the advent of the typewriter—a fact that would impel its adoption in any industrial enterprise.

(*d*) In prior cases the single surname employed has been of a person who (as stated in the Rogers case, 70 Fed. Rep., 1017) has "sold his name as a decoy, or permitted his name to be used for hire to deceive the public." In the present case there was never any compensation promised or paid to either Sholes or Remington for the use of their names (R. 440-441), and in this case also the machine of defendant was one made commercially possible by both Remington and Sholes, both were largely and actively interested in the management of the old company, and Mr. Remington continued as the general manager of the new company.

(*e*) In prior cases the persons contributing their names to be used by corporate defendants had already sold to the complainants their business and the right to use their names, and hence were morally, if not legally, bound to avoid the injury of such right by engaging in business under any corporate name that would injure their vendees

more than would the simple use of their individual names. In the case at bar there had never been any contractual relations whatever between Franklin or Carver Remington or Sholes and complainant.

(*f*) In prior cases defendants had copied the signs, or labels, or characteristic marks of complainants in their endeavor to palm off their goods as and for those of complainants. In the case at bar it will scarcely be contended that defendant has ever attempted to imitate complainant's signs, advertisements or other insignia, but, on the contrary, it has adopted most distinctive signs, circulars, etc., of its own, and has invariably by its advertisements, its literature, and its instructions to its agents, taken every reasonable precaution to prevent confusion by the purchasing public—with the result that no one could purchase a machine of defendant's manufacture without having forced upon him the knowledge that it emanated from the "Remington-Sholes Company, Manufacturers, Chicago."

(*g*) In prior cases defendants in their efforts to steal complainants' trade have made their wares in close imitation of complainants'. In the present case, on the contrary, defendant's machine was a most radical departure in appearance from all other typewriting machines upon the market.

(*h*) In prior cases the courts found that the defendants had resorted to various other kinds of fraudulent acts to palm off their wares for those of the complainants. In the present case the Court of Appeals, although enjoining the use of the name "Remington" in the name "Remington-Sholes," has unanimously found (R. 1522) that defendant has not done anything to promote confusion in the public mind beyond the bare use of the name upon its machines and in its literature.

*R. W. Rogers Co. et al.* v. *Wm. Rogers Mfg. Co.*, 70 Fed. Rep., 1017. As it is upon this decision that Judge Cox bases his concurring opinion in the case at bar (R. 1530), we trust that your Honors will carefully examine this Rogers case, as we are confident that a consideration of the facts therein must at once show how widely that case differs from the one before you. In this Rogers case, as the opinion shows, complainant's predecessor had achieved a wide reputation in a single line of industry, viz., the manufacture of silver plate.

> "In 1879 or 1880 a corporation called the Rogers Silver Plate Co. was formed in New York City by Robert W. Rogers, one Brown and one Boardman. Rogers had been a salesman of silver-plated ware but was not a manufacturer. The corporation was formed so that an Albany manufacturer by the name of Strickland and doing business as R. Strickland & Co. could use the name of Rogers on his flat ware, and gain the advantage of the reputation which the name had in the market. For the use of his name Robert W. Rogers was given a fourth interest in the corporation. Some time thereafter, Strickland and Rogers disagreed, and Rogers became a salesman of the goods made by the complainant."

Later on, R. W. Rogers induced others to form a new corporation under the name "R. W. Rogers Co." and entered into an agreement with the Curtis-Crume Company by which the former manufactured silver-plated flat ware for the latter company, which ware bore the name of the said Rogers Company. In summing up its findings of fact the court there states:

> "It is evident that the scheme was a reproduction of the old scheme in which Rogers was engaged in 1880 by which he sold his name as a decoy, or permitted his name to be used for hire to deceive the public."

This Rogers case is wide of the case at bar for the following, among other reasons: (1) The name Rogers had no reputation outside the single line of industry in which it was employed, viz., silver-plated ware, and the plain object of the use of the name "Rogers" by defendant was to trade upon complainant's reputation and sell its goods for complainant's. In the case at bar, on the contrary, the family name "Remington" had a world-wide reputation in many lines of industry—a reputation that would impel the use of such name by any member of that family in any manufacturing business. (2) In the Rogers case, R. W. Rogers was not engaged in the manufacture of the goods bearing that name; whereas in the case at bar, Franklin Remington has at all times been the general manager of the company manufacturing the typewriting machines in connection with which the corporate name "Remington-Sholes Company" and the name "Rem-Sho" have been used. (3) In the Rogers case, as the court there found, R. W. Rogers "sold his name as a decoy or permitted his name to be used for hire to deceive the public." In the present case, as the uncontroverted record shows, Franklin Remington expended $15,000 and months of close application in the development and exploitation of the typewriting machine and was a large stockholder in, and general manager of the company that made it. (4) In the Rogers case R. W. Rogers gave to the corporation organized by him a single surname, although others experienced in the same line of manufacture were associated with him. In the case at bar, on the contrary, two surnames, Remington and Sholes, were given to the corporation, thereby clearly distinguishing it from complainant and its pseudonyms. (5) The decision in the Rogers case was rendered by Judges Wallace and Shipman. The fact that

Judge Wallace so emphatically dissents from the majority opinion of the Court of Appeals in the case at bar is most persuasive of the radical difference between these cases. This Rogers case was immediately followed by a decision of the same court in *Rogers* v. *Wm. Rogers Mfg. Co.*, 70 Fed. Rep., 1019, in which defendant was held entitled to the use of his name.

*Peck Bros. & Co.* v. *Peck Bros. Co.*, 113 Fed. Rep., 291, is without bearing here. In that case the court found that "the record is replete with evidence touching the confusion of goods and the sales thereof. . . . Upon the question of confusion of goods there is no dispute." It restrained the use by defendants of the name "Peck Bros. Co.", not merely because of the fiduciary relations in which defendants had stood with respect to the original "Peck Bros. & Co.", but for the reason thus plainly stated by his Honor, Judge Jenkins:

> "Here the artifice consisted not in using one's own name, but assuming *falsely* the name 'Peck Bros.', there *being no brothers of that name in the corporation*. . . . The assumption of the name 'Peck Bros. Co.' was of itself the utterance of a falsehood, for there were no brothers Peck interested in the corporation."

The case of *Chickering et al.* v. *Chickering & Sons*, 120 Fed. Rep., 69, was an appeal from an order granting a preliminary injunction. In that case the defendant corporation had selected a *single* surname which had no reputation outside the *single line of manufacture*, had imitated the marking of complainants' pianos and had conspicuously displayed upon its pianos the words "the only piano made by Chickering." In its decision the Court of Appeals said:

> "We prefer to reserve judgment until the coming

> in of proofs. For the present we cannot say that the discretion of the court below was improperly exercised in restraining the acts complained of. It may be that the order is in some respects too broad in its terms, *particularly the second paragraph of it;* but the assignment of errors goes to the whole order, and not to any particular paragraph of it, so that we are not called upon to scrutinize language unchallenged by the parties complaining."

The second paragraph of the order (concerning which the court thus expressed its doubt) was one enjoining the use of the name Chickering "to designate the name of a corporation manufacturing or dealing in pianos." This court will therefore see that the Chickering case is not an authority here.

In *Massam* v. *J. W. Thorley's Cattle Food Co., Ld.*, 14 C. D., 748, J. W. Thorley was the holder of a one-shilling share in the company, and as Lord Justice James stated:

> "He either tendered himself for sale, or was found for purchase by some persons in order that his name might be got into a joint stock company formed for the sake of selling these goods."

The court also found that the defendant company had imitated the get-up of plaintiff's goods and had intentionally acted in such way as to induce the public to take defendant's goods from those of plaintiff's manufacture. Yet notwithstanding these facts, the injunction left the defendants at liberty to use their name and the word "Thorley" in any way not calculated to mislead the public. (See Kerley on Trade-Marks, p. 511.) From these facts the court will see that the Thorley case is wide of the case at bar.

In *Pillsbury et al.* v. *Pillsbury-Washburn Co.*, 64 Fed. Rep., 841 (C. C. A.), the complainant (appellee) and

its predecessor had long employed a peculiar brand for flour consisting of the words "Pillsbury's Best XXXX, Minneapolis, Minn.," printed in blue and red within a double circle of dots, and at each side of the circle the word "Pillsbury" was arranged in a vertical line, while beneath the circle the words "Pillsbury's Best" appeared. Defendant's flour was marked with the words "L. F. Pillsbury's XXXX Best Patent Minnesota," arranged within circles of dots, the words "L. F. Pillsbury's Best" being also arranged in the same position that the words "Pillsbury's Best" appeared in complainant's brand. The contrasting colors in both brands were the same. The Court of Appeals distinctly stated that "the appellant Pillsbury has an undoubted right to use his own name in any honest way," but found that there was a fraudulent imitation of complainant's brand and the decree was directed against the brand. The cautionary notices put out by defendant in that case were not directed to the ultimate purchaser, but to the dealer, and hence were of no avail. The case is therefore clearly distinguishable from the case at bar.

*Walter Baker & Co.* v. *Baker*, 77 Fed. Rep., 181; *Walter Baker & Co.* v. *Sanders*, 80 Fed. Rep., 209; *Walter Baker & Co.* v. *Baker*, 87 Fed. Rep., 209. In all these Baker cases defendants' goods were put up in packages with marks and labels closely resembling the complainant's and in these cases defendants' whole conduct was tainted with fraud. The court enjoined defendants against using the name "Baker's Chocolate" but it was held in the last case that "defendants may indicate in any appropriate language that their chocolate is made by W. H. Baker of Winchester, Va." And to avoid expense of changing the labels the court allowed defend-

ants to simply apply a label bearing the statement that "W. H. Baker is distinct from and has no connection with the old chocolate manufactory of Walter Baker & Co." This statement is no more distinctive than those constantly used in the case at bar by defendant's principal since the very inception of its business.

In the brief before the Court of Appeals counsel for complainant invoked the decisions of this court in these Baker cases and argued with much vehemence that because this court had forbidden the defendant there to mark his goods "Baker's Chocolate" defendant here should be enjoined from marking its machines "Remington-Sholes Co., Mfrs., Chicago," and with the fanciful trade name "Rem-Sho." Aside from the fact that the present case contains none of the elements of fraud that characterized the Baker cases, the court must perceive at once the radical difference between the use of the Christian name or initials of a defendant and the use of TWO DISTINCT SURNAMES to differentiate a defendant's goods from those of a plaintiff. This distinction is very clearly recognized by Mr. Sebastian in his "Law of Trade-Marks" (4th Edition), p. 23, in the following language:

> "There is between a name of an individual or firm used as a trade-mark, and a fancy name or arbitrary symbol used for the same purpose, a broad distinction which was early perceived, and which caused some difficulty in the universal acceptance of a name as an efficacious trade-mark. This difference is that a name is in its very nature generic, and is properly applied to designate, not one individual in the world, but, it may be, many thousands, to all of whom it is equally appropriate. The addition of the Christian to the surname does, indeed, diminish the number of persons to whom the appellation belongs; but the Christian name is commonly abbreviated to an in-

itial letter, and, in any case, the surname is the important part of the name, beyond which many persons do not care to investigate."

Plainly there is nothing in these Baker cases to warrant the decree of the lower court in this cause enjoining defendant against the use of the name Remington-Sholes Company and the fanciful trade-mark Rem-Sho. On the contrary, the language of this court in the Baker cases if followed here must permit defendant to use upon its machines the words "REMINGTON-SHOLES COMPANY, Mfrs. CHICAGO" because these words merely state in another way that the machines are made by the Remington-Sholes Company of Chicago. If any doubt existed as to the bearing of the Baker cases above cited we need only refer to the recent decision of the Court of Appeals for the Second Circuit in *Baker* v. *Baker,* 115 Fed. Rep., 297, where the defendant, a *corporation* named "William H. Baker, Syracuse," was expressly allowed to mark its chocolate with such corporate name. Certainly if in that case it was proper for the defendant corporation to mark its goods "William H. Baker, Syracuse" it must be equally lawful for defendant in this case to mark its machines "Remington-Sholes Company, Chicago."

In *Garrett* v. *T. H. Garrett & Co.,* 78 Fed. Rep., 472 (C.C.A.), it appeared that complainants were the manufacturers of snuff long known upon the market as "Garrett's Snuff." The defendant was a corporation organized by T. H. Garrett with a capital stock of 350 shares, to which Garrett subscribed to two and one-half shares only. T. H. Garrett was totally devoid either of personal or family reputation and simply gave his name to the defendant company, *in which he had no substantial interest and was not an officer, for the sole purpose of de-*

*ceiving the public, and in furtherance of this object the defendant company closely imitated the packages and labels of complainant.* Manifestly the facts in the Garrett case clearly distinguish it, therefore, from the case at bar; and in the later case of *Proctor & Gamble Co.* v. *Globe Refining Co.*, 92 Fed. Rep., 357 (C. C. A.), the same court considered this Garrett case and made plain the fact that the decision in such case was because T. H. Garrett *had no material interest in the defendant company and had allowed the use of his name for the sole purpose of effecting confusion in trade.*

In *Stuart* v. *F. G. Stewart Co.*, 91 Fed. Rep., 243 (C. C. A.), it appeared that complainant had built up a large trade for "Stuart's Dyspepsia Tablets." F. G. Stewart organized the defendant corporation and began selling a like preparation under the name "Dr. Stewart's Dyspepsia Tablets." The court found that defendant's *packages unfairly imitated complainant's* and decreed that defendant be enjoined from using the words "Dr. Stewart's Dyspepsia Tablets," stating:

> "It needs no argument to show that these names are *idem sonans* and that the use of both of them in connection with dyspepsia tablets must cause great confusion in the sale and great wrong to purchasers."

The facts in the Stuart case clearly differentiate it from the case at bar.

In *LePage* v. *Russia Cement Co.*, 51 Fed. Rep., 941 (C. C. A.), the facts were stated to be substantially the same as in the LePage case reported in 147 Mass., 206. LePage, having established a reputation for his glue as "LePage's Glue," formed a partnership and thereafter organized a corporation to which was assigned the entire assets and good-will of the business. He continued actively in the business of such corporation for some time

and then sold his stock and severed his connection therewith. Subsequently he formed a corporation entitled "The LePage Company," which sold glue designated as glue made by the LePage Company. The court held that this was a violation of the right acquired by the original corporation to the use of the name "LePage" in connection with glues, and said:

> "We have no occasion to deal with the long line of authorities commencing with *Croft* v. *Day*, 7 Beav., 84, of *Holloway* v. *Holloway*, 13 Beav., 209, and ending with *Chemical Co.* v. *Myer*, touching the original inherent right of every person to the honest use of his own surname. *These do not apply when the original right has been voluntarily parted with as in the case at bar,"* etc.

The adoption of the name "LePage Company" would naturally lead the public to call its product "LePage Company Glue" or "LePage Glue," and the *single* name "LePage" would be the one by which the public would identify both the complainant's and defendant's glue. The LePage case, therefore, is not only distinguished from the case at bar because LePage had "parted with his right" to the use of his name and was therefore *estopped* to confer such name upon a second corporation, but is distinguished also in the further respect that it involved the use of a *single* surname which the public would necessarily rely upon to designate the glue made by the defendant company. Neither Remington nor Sholes, in the case at bar, had in any manner parted with his right to the use of his name, nor was the public left to rely upon a single surname whereby to designate the machine manufactured by the Remington-Sholes Company. On the contrary, the record shows beyond dispute that the machines of the old Remington-Sholes Typewriter Company

were known solely as the "Remington-Sholes," while the machines of the Remington-Sholes Company are known as the "Rem-Sho."

The case of *Holmes, Booth & Hayden* v. *Holmes, Booth & Atwood*, 37 Conn., 278, was also one in which, as the court stated, there was involved "the element of a *contract or estoppel;*" and the courts, when citing this case, have generally recognized the fact that it turned solely upon such question of estoppel, as all the defendant's incorporators had been connected with the complainant company and withdrew therefrom for the express purpose of organizing the defendant company with its factory in the same town and its principal business offices in the same cities and upon the same streets as complainants.

In *Charles S. Higgins Co.* v. *Higgins Soap Co.*, 144 N. Y., 462 (January, 1895), Charles S. Higgins, who with his wife and sons organized the defendant company, was the son of the original Charles S. Higgins, who had established a wide reputation for his soap under the name "Higgins' Soap." After Charles S. Higgins succeeded to his father's business, he organized complainant company and was its president. He transferred to complainant, among other assets, a label bearing the words "Higgins' Soap." The record showed that complainant came to be designated as the "Higgins' Soap Company," and its product as "Higgins' Soap." After the defendant company was organized, it established its business in the same city with complainant, and marked its labels and soap "Higgins Soap Co., original laundry, Charles S. Higgins, Pres." The record showed extensive confusion in trade, both past and probable, because the name "Higgins' Soap" naturally attached to defendant's product, since the

*single* name "Higgins" was the only distinctive name whereby the public could designate it. The facts of the Higgins case clearly distinguish it, therefore, from the case at bar, in which neither Remington nor Sholes ever had any connection with complainant company, and in which, with equal prominence, *two* names (Remington and Sholes) are given to defendant corporation, and a fanciful name (Rem-Sho) is given to the product.

Even in the Higgins case and, notwithstanding the slight difference between the corporate names, the court said:

> "If the right of complainant to relief depended exclusively upon the comparison of the corporate names of the parties and the inferences to be drawn from such comparison and without reference to intrinsic facts, it might well be doubted whether the names are so similar that the court could find that confusion and injury would be likely to arise."

If the court entertained doubt upon a comparison of names so closely resembling each other as those in the Higgins case, certainly it could hold no doubt in a case like that at bar, where the name of the real defendant company is so manifestly unlike the name or pseudonyms of the complainant company.

Certainly, the fact in the case at bar that the defendant has marked its machines with a distinctive fanciful name, has marked its machines also with a corporate name havnig TWO SURNAMES OF EQUAL PROMINENCE, and has placed in the hands of the ultimate purchaser every means for distinguishing its product from complainant's, must clearly show the marked distinction between the Higgins case and the case at bar. That any force whatever may be attached to the Higgins case, it must be distinguished from the case of *Meneely* v. *Meneely*, of which the court

in the Higgins case expressly approved, and from the Duryea case recently decided by the U. S. Circuit Court of Appeals. Upon whatever grounds the Higgins case is distinguished from such two cases, the same distinction must carry it at every point wide of the case at bar.

In *DeLong et al.* v. *DeLong Hook & Eye Co.*, 35 N. Y. S., 509, Oscar A. DeLong, a man without any experience whatever in the manufacturing business and without any family reputation, commenced to manufacture and sell hooks and eyes mounted upon cards in the same manner as plaintiff's and marked with the words "DeLong Hook & Eye Company, makers, New York," the manifest purpose being to cause the hooks and eyes of the defendant company to be mistaken by the public for the DeLong hook and eye with which it had long been familiar. The single name "DeLong" was the only distinctive one in defendant's corporate name and the inevitable result was that defendant's product became confused with complainant's. The court, after noticing the fact that the selection of the name of the defendant company was made for the purpose of "decoying away plaintiff's trade," and the further fact that there were but slight and immaterial differences in the appearance, coloring, size of cards, etc., between complainant's and defendant's packages, said:

> "But the circumstances surrounding the creation of the defendant and the name of it, satisfy us as they did the trial court, that the selection of the name was not an honest one, but was a part of the original scheme of Oscar A. DeLong to make such use of his own name as would enable him to profit by the name which the plaintiffs had given to their hooks and eyes and which they had made valuable by much labor and a liberal expenditure of money."

In the DeLong case the court expressly said that the

decree "should not embarras the defendant in any honest effort which it may hereafter make to put its goods upon the market in a manner which shall not have the effect of persuading customers that the defendant's goods are the manufacture of the plaintiffs."

The facts of the DeLong case clearly distinguish it, therefore, from the case at bar, wherein both Remington and Sholes not only had their fathers' reputations as a warrant for using their names, but also had themselves produced a valuable machine that is placed before the public under a fanciful name totally unlike the name of complainant's machine, and under a corporate name composed of two distinct surnames. The DeLong case came again before the court in December, 1895, upon a motion to attach defendant, DeLong, for contempt, and Ingraham, J., granted the motion, but upon appeal, 39 N. Y. S., 903 (June, 1896), the order of the court adjudging DeLong guilty of contempt was reversed and it was held that DeLong might use his name rightfully in business notwithstanding any injury it might inflict upon complainant. This final disposition of the DeLong case seriously modified the effect of the prior decisions. But aside from the wide distinction between the facts in the DeLong case and those of the case at bar, the court will notice that the DeLong case, so far as it may have bearing upon the case at bar, is ruled by the later Duryea decision.

In *Clark Thread Co.* v. *Armitage*, 74 Fed. Rep., 936 (C. C. A., 2nd Circuit, May, 1896), the complainant had lawfully succeeded to a thread-manufacturing business established many years before. Its threads were placed upon the market under the name of "Clark's Thread" or "Clark's Cotton," and had become universally known by these names and as well also by certain fanciful labels

and arbitrary letters that were placed upon the ends of the spools on which the thread and cotton were wound. William Clark (known in the case as William Clark No. 1) was the grandson of the original Clark by whom the business was established, was one of the original promoters of the complainant company and its sole resident partner in this country, and had become very well known in connection with complainant's business. The defendant Armitage was the agent of the "William Clark Company," which was organized by another William Clark (known as William Clark No. 2), who had been associated with complainant company in responsible positions and as a director. The court found that the purpose of the organization of the William Clark Company and of its methods of doing business was to secure for such company complainant's business by placing defendant's goods upon the market in such way that they should be mistaken by the public for the goods of complainant. To this end the William Clark Company imitated the labels on complainant's spools in various ways so that these labels not only showed the words "Clark's Spool Cotton" in the same type and with the same arrangement as on complainant's spools, but showed also initial letters "N. E. W." arranged horizontally across the labels in the same manner as the initials "O. N. T." were arranged on complainant's spools. Moreover, as the court stated, "the exhibits in the case make it manifest that the defendant has been ingenious and persistent by advertisements, circulars, cards and devices of various sorts, to represent that the thread which he was selling was Clark's New Spool Cotton." There had been an assent by complainant to the use by the William Clark Company of that corporate name, and the court stated that in the absence of such assent the selection of the name would have

been both unnecessary and improper, because, as the court said, "the name was adopted not merely to obtain the benefit of the reputation of William Clark No. 2, but to gain the enlarged reputation which had belonged to Clark's thread for a great many years."

The Clark case was decided several years before the Duryea case and by the same court, so that the decision in the latter case must control so far as the questions dealt with are the same. But even in the absence of the later decision of the Duryea case the distinction between the Clark case and the case at bar must be apparent. The public had come to know complainant's product as "Clark's Thread" or "Clark's Spool Cotton." When, therefore, the William Clark Company began business and marked its spools of cotton with the words "Clark's Spool Cotton" an inevitable confusion resulted with great loss of trade to complainant. The word "Clark" was the only surname and the one distinctive name in the title of the William Clark Company, and as in complainant's label, was the one word upon which the public could rely. The prefix "William" was manifestly of little avail, not only because such an ordinary Christian name does not readily fix itself in the public mind, but because purchasers, knowing only the Clark Company, would not differentiate the William Clark Company from it, particularly when the names were associated upon labels so closely similar to those with which they had long been familiar.

Is it conceivable that the decision in the Clark case would have been the same if defendant had adopted the name "The Clark Jones Company" and had displayed each of these surnames with equal prominence and had adopted labels radically different in appearance from plaintiff's labels and bearing a fanciful trade-name totally

unlike in sound or appearance to anything employed by complainant? Or would the court have enjoined a son of William Clark No. 1 if, associating himself with another individual who had invented an entirely different style of thread and whose father had been a pioneer inventor in the thread industry, he had organized a corporation for the manufacture of such new style of thread, had adopted entirely different styles of labels and a different fanciful name, had taken every precaution to prevent confusion in the public mind and had adopted a corporate name including both surnames with equal prominence? We submit that the mere asking of these questions suggests a negative answer; and yet an affirmative answer to such questions, had they arisen in the Clark case, must be assumed before it can be said that the decision in that case shall control the case at bar.

In *Fuller* v. *Huff*, 104 Fed., 141 (C. C. A.), complainant had traded for many years under the name of "Health Food Company," and under such name had acquired a wide reputation for his goods. Defendant's principal, after having presented its goods to the public for years under the name "Sanitarium Foods" and "Invalid Foods," adopted the name "Sanitarium Health Food Company." While it may be difficult to reconcile the "Health Food case" with the case of *Goodyear Rubber Co.* v. *Goodyear Rubber Mfg. Co.*, *supra*, it is still clearly distinguishable from the case at bar. In this case the name "Remington-Sholes Company" and the fanciful name "Rem-Sho" as used by defendant are manifestly a step further removed from any of the complainant's pseudoynms and from the name of its machine than were the names "Remington-Sholes Typewriter Company" and the name "Remington-Sholes" as formerly used. In the

Health Food case complainant became known by the name "Health Food Company," and manifestly, as defendant appropriated all of complainant's name, the prefix "Sanitarium" employed by defendant, being a word of kindred meaning, might not readily serve as a means whereby the public could differentiate the two names. There is certainly nothing in this Health Food case to indicate any purpose of the court to modify its decision in the Duryea case, the facts in which are so singularly like the facts in the case at bar.

In *Roy Watch Case Company* v. *Camm-Roy Watch Case Company*, 58 N. Y. S., 979, it appeared, on a motion for temporary injunction, that defendant company had acquired the right to use the name of "Roy Manufacturing Company." Thereafter, and with the manifest purpose of invading complainant's trade, defendant adopted the name "Camm-Roy Watch Case Company." The court (at special term) restrained defendant, not because of its use of the name "Camm-Roy," as it admittedly had the right to use the name "Roy Manufacturing Company," and obviously the right to use the name "Camm-Roy Company," but because, by adopting the combination of words "Roy Watch Case Company," it unfairly and unnecessarily used all of complainant's name.

In *S. Howes Co.* v. *Howes Grain Cleaner Co. et al.*, 52 N. Y. S., 468, it appeared that complainant, being engaged in the manufacture of grain-cleaners, etc., had become known in the trade by various pseudonyms, such as "The S. Howes Grain Cleaner Co." Five out of seven of defendant's incorporators had up to two weeks before its incorporation been in the employ of plaintiff, and one of these, C. N. Howes, defendant's president, had been

one of the executors and manager of complainant's business for the executors. C. N. Howes, as the court stated, possessed no greater knowledge or experience in the business than the other incorporators, and there was therefore no reason for making prominent his name except that it might be used as a decoy to attract complainant's trade. The name "Howes" was the distinctive name common to both companies and was the only name upon which the public would rely, since the words "Grain Cleaner" appearing in defendant's name would be as readily associated and had in fact been associated with complainant's name because of the identity of their business.

In *International Silver Co.* v. *Simeon L. & George H. Rogers Co.*, 110 Fed. Rep., 955, Shipman, J., August, 1901, it appeared that Simeon L. and George H. Rogers were sons of one of the three Rogerses who comprised the original firm of "Rogers Brothers." George H. Rogers was a farmer and Simeon L. Rogers had been a workman on day wages in the silverware business prior to the organization of defendant company. The trade-mark adopted by defendant company closely resembled the trade-marks of complainant and *special prominence* was given to the word "Rogers" and "Rogers Brothers." In this connection the court said:

> "In point of fact the prefixes and suffixes are obscure and to the ordinary observer, enigmatical. They actually convey no meaning. *The marks simulate the marks of the complainant*, and under the guise of simulation present the appearance of the marks of the complainant."

The preliminary injunction was granted as to the trade-marks.

The preliminary injunction was refused as to defend-

ant's corporate name, although the court said that "if this case was at final hearing upon precisely the same evidence that is now presented, the history of the corporation would strongly tend to a conclusion that its name had been selected unnecesarily for the purpose of unfair competition."

It appeared that the defendant company had put out circulars which described its goods as "real Rogers' goods," and had in various ways sought to palm off its goods for complainant's.

While this Rogers case is parallel in some respects to the case at bar, it is clearly distinguished therefrom in the very particulars that produced the unfavorable decision and criticism of his Honor Judge Shipman. In that case, as in this, the defendant company was organized by men whose father had acquired a wide and favorable reputation. This motive for using the name Rogers by the defendant company was recognized by Judge Shipman as a legitimate and proper one since he distinctly says in speaking of Simeon L. Rogers, "he brought no peculiar element of success to the new business except the declaration that he was the son of one of the original members of 'Rogers Brothers.'" But the Rogers case is clearly distinguished from that at bar in the following respects: Simeon L. Rogers had been but a mere day laborer in the silverware business. In this case, Franklin Remington had not been a day laborer in the typewriting business but he had been associated with Mr. Sholes for months in the construction and perfection of the typewriting machine that was to be manufactured by the company to be organized; he had paid from his own pocket the expenses to the amount of thousands of dollars for the work upon this machine; he had subscribed to a large part of the capi-

tal stock of the company organized for the manufacture of this machine, and with the personal assistance of Mr. Sholes he had for the first year or eighteen months of the company's existence personally managed the business and superintended every detail of manufacture. In the Rogers case two parties of the name of McFayden were associated in the defendant company, but their name was concealed, notwithstanding the fact that they had a deserved reputation in the silverware business and were to be the active managers of the corporation In this case, on the contrary, the name of Sholes appears with equal prominence upon the machines with the name Remington.

Another difference between the Rogers case and that at bar is found in the fact that in that case there was apparently a purpose on the part of the defendant company to conceal the identity of the complainant and to create the impression that the defendant company was itself the old original company. In the present case, on the contrary, the defendant company by word of mouth, by circulars, by letters of instruction, by advertisements and in every conceivable way has advised the public that it does not manufacture the well-known Remington typewriter or the Remington Standard typewriter. Moreover, in like manner defendant, by its agents and salesmen, has uniformly compared the two machines, pointing to the Remington Standard as the "well-known and excellent machine" that has been favorably before the public for many years, and pointing to the new machine as an improvement over the old machine, but made by an entirely different concern. And while defendant has sought to obtain advantage from the use of Mr. Franklin Remington's name, it has never sought to palm off its machine for complainant's but has simply used the name in such

a way as to inform the public that its machine was being manufactured under the supervision of Mr. Franklin Remington, the reputation of whose family was world-wide long before the existence of a typewriting machine.

In *Meyer* v. *Dr. B. L. Bull Vegetable Medicine Co.*, 58 Fed. Rep., 884, the court had before it a case in which the defendant had, with the intention to decieve, adopted as a name for its medicine the words "Dr. Bull's Cough Syrup," being precisely the name with which complainant's medicine was marked. The court there said:

> "The defendant devised, constructed and arranged the name as well as the wrapper of its article for the fraudulent purpose of causing it to be mistaken and sold in the market for complainant's article, and that the tendency of defendant's acts in the premises was to effect that result."

The court therfore enjoined defendant against the use of the name "Bull's Cough Syrup" or "Dr. B. L. Bull's Cough Syrup," but did not enjoin defendant against the use of its corporate name.

In *Plant Seed Co.* v. *Michael Plant Seed Co.*, 23 Mo., 579, the case came before the court upon demurrer to a bill or petition that alleged fraudulent adoption of defendant's name. The demurrer admitted the fraud charged and was therefore overruled.

## No Unfair Trade Competition by Defendant or the Remington-Sholes Company.

The Circuit Court of Appeals in its majority opinion said (R. 1522):

> **"We do not find in this voluminous record sufficient evidence that defendant" (by which name, as the opinion states, the Remington-Sholes Company is designated) "has itself done**

**anything to promote confusion in the mind of the public, except to use the name Remington on its machines and in its literature. It may very well be that it understood quite clearly that by using the name, defendant gave to all middlemen and dealers, outside of its own agents, opportunity and perhaps a suggestion to misrepresent the parentage of the machines, but, if it had the right to use the same, it cannot be held responsible for the consequences of such use."**

This unanimous finding might well excuse this court from the tedious examination of the record in the absence of any specific showing by complainant of material error in such finding. But we trust that your Honors may at least go far enough into the testimony to see how uniformly fair have been defendant's methods, and how complainant's record of over a thousand pages is padded with a mass of improper, irrelevant and incompetent matter such as foreign advertisements with which defendant admittedly had no connection, newspaper "squibbs," hearsay depositions of employees, "trap" testimony of detectives, manufactured evidence proven to be false, letters asserting confusion where no attempt was made to produce the writers, etc. And these foreign advertisements and like irrelevant matter are so ingeniously interspersed with testimony regarding matters occurring in this country that they produced on the mind of the Circuit Court the erroneous impression that the transactions abroad and here "emanated from a common source." (See opinion, R. 1497.) Thus, for example, on R. 884 is found an invoice of the Howe Scale Company; on R. 885 various foreign advertisements; on R. 886 extracts from defendant's catalogue; on R. 887 to 909 more foreign advertisements; on R. 910 to 920 cor-

respondence of one of complainant's detectives with defendant's salesmen, etc., and so on through the record.

So, to, the misleading way in which counsel included in their brief before the Court of Appeals garbled extracts from the testimony and exhibits, impels us to ask that this court will consult the record wherever any apparently reprehensible act or expression for which defendant or its principal may be responsible, is brought into question.

**Facts Pertinent to the Determination of Unfair Trade Competition.**—As complainant can have no exclusive right to the name "Remington" as a valid trademark and as it has been shown that no fraud was practiced by the organizers of the Remington-Sholes Company in the adoption of its corporate name, it remains for the court to determine whether the record discloses any such unfair trade competition as will support the charges of the bill of complaint. In its determination of this question it is important that the following points be considered:

(A) The offices of complainant are established in every city and town of importance throughout the United States, and its agents have been instructed to report to its New York office matters that may have bearing upon the questions involved in this suit. (R. 526, 538, 638.)

(B) For more than six years the machines of the Remington-Sholes Company and its predecessor have been upon the market in open competition with complainant's machines, and during the greater part of this time complainant's agents have been gathering material for use in this cause. It is, therefore, highly probable that if any instance of deception or confusion has occurred complainant has been advised thereof.

(C) In the case of machines such as typewriters,

which are usually sent out on trial before purchase (R. 547) which are comparatively expensive and which are bought usually direct from the manufacturer, a far greater degree of care may reasonably be expected on the part of the purchaser than in the case of smaller articles, such as medicines, soaps, thread or the like, where the cost is small and the need of care in selection correspondingly slight.

(D) All of complainant's machines have been conspicuously marked with the name "REMINGTON," with the name "REMINGTON STANDARD TYPEWRITER," with the name and address "MANUFACTURED BY WYCKOFF, SEAMANS & BENEDICT, ILION, N. Y., U. S. A." and with the "RED SEAL" trade-mark, are finished in black enamel, and have been before the public with these marks for many years, while the machines of the Remington-Sholes Company have been distinctly marked with its trade-mark "REM-SHO" and with the words "REMINGTON-SHOLES COMPANY, MFRS., CHICAGO," and have been highly ornamental and finished in bronze, as distinguished from the conventional black of all other machines.

(E) Complainant's offices are provided with signs bearing its name, its "Red Seal" trade-mark, etc., etc., while the offices of the Remington-Sholes Company and of the dealers in its machines are furnished with conspicuous signs reading "REM-SHO TYPEWRITER, MANUFACTURED BY THE REMINGTON-SHOLES COMPANY, CHICAGO, ILLS.," with catalogues giving the name of the machine, the name and address of the Remington-Sholes Company, the notice that it has no connection with complainant's machine, etc., so that no one entering such offices could fail to observe these most distinctive points.

With an army of agents and salesmen scattered over the country, it would scarcely seem reasonable that complainant should have found it necessary to employ detectives to gather evidence to be used in this cause, and yet, as will be presently shown, it is upon testimony of such that it must mainly rely to sustain the charges of this bill.

When this court considers complainant's voluminous record it must be surprised not merely at the lack of evidence showing actual confusion in trade or the passing off of defendant's for complainant's machines, but will, we believe, view with astonishment and aversion the methods that have been resorted to to support the allegations of its bill,—methods that should wholly discredit the honesty of its case.

And yet, as we shall presently show, counsel for complainant urgently ask this court to credit the testimony of such witnesses as the detective employee Crean *alias* Francis *alias* Hood, who from Montreal to Baltimore vainly sought by deception and falsehood to entrap defendant's salesmen in his effort to manufacture evidence for use in this case; and the testimony of the witness Scheumaker, who at the instigation of Crean and under the pay of Wyckoff, Seamans & Benedict sought by a series of lying letters to worm himself into the employ of defendant that he might aid complainant's feeble case and whose attempt to induce defendant's agent to misrepresent defendant's machine was so promptly resented; and the shameless witness Scorer, whose efforts to prove that he had acted dishonestly while in defendant's employ were so completely refuted by the very persons he claimed to have deceived; and the witness Platt, who was admittedly a party to the most dastardly conspiracy to make testimony against defendant; or the witness John-

son, who produced and swore to a *typewritten copy* of a memorandum made as the result of his visits to various typewriter users, when the production of his original notes showed his statements false; to say nothing of the string of employee witnesses who gave the baldest kind of hearsay testimony while claiming that they might have produced the parties whose statements they pretended to repeat.

Not only must this court visit with its condemnation the production of such testimony, but must wonder that complainant's unscrupulous efforts have been so often foiled and that its unconscionable witnesses have not been more successful in their attempts to manufacture proof.

**What Necessary to Establish Charge of Unfair Competition.**—Before passing to a consideration of the testimony offered to support complainant's charge of unfair trade competition, the attention of the court is invited to the following points:

*First*, it is by a defendant's course of conduct and not by minor or sporadic acts that unfair trade competition must be proven. *Gorham Mfg. Co.* v. *Emery-Bird-Thayer Co.*, 104 Fed. Rep., 243, C. C. A.

The purpose of infringement proof in litigation like the present is to show to the court the way in which defendant is in the habit of conducting its business under ordinary conditions, that the court may determine whether such way is an honest or a fraudulent one. Obviously, the extraordinary machinations of a detective seeking by deception and falsehood to persuade a defendant's salesman into committing a wrong can not enlighten the court as to a defendant's usual course of business, because they

produce an abnormal condition that in actual trade could not possibly exist.

*Brown Chemical Co.* v. *Meyer*, 139 U. S., 540.
*Centaur Co.* v. *Marshall et al.*, 97 Fed. Rep. 785 (C. C. A.).
*Lorillard* v. *Peper*, 86 Fed. Rep., 956 (C. C. A.).
*Sterling Remedy Co.* v. *Eureka etc. Co.*, 80 Fed. Rep., 105 (C. C. A.).
*Rogers* v. *William Rogers Mfg. Co.*, 70 Fed. Rep., 1019 (C. C. A.).
*Mueller Mfg. Co.* v. *McDonally & Morrison Co.*, 132 Fed. Rep., 585.

Such matters as the selling by a defendant of its machine at a lower price than complainant's (*Lorillard Co.* v. *Peper, supra*) and the hiring of complainant's salesmen and the canvassing of the same territory (*Coats* v. *Merrick Thread Co.*, 149 U. S., see p. 566; *National Starch Co.* v. *Duryea, supra*) have all been recognized as fair competition with which a court will not interfere.

*Second*, the authorities are uniform in holding that it is the "passing off" by a defendant of his goods as and for those of complainant that must form the basis of an action of this character. As was said by the Supreme Court of the United States in the very recent case of *Elgin National Watch Co.* v. *Illinois Watch Case Co., supra*:

> "The essence of the wrong consists in the sale of the goods of one manufacturer or vendor for those of another."

In *American Washboard Co.* v. *Saginaw Mfg. Co.* (C. C. A.), 103 Fed. Rep., 281, the court, after reviewing the various authorities to the effect that complainant's right to relief is founded exclusively upon the fact that defendant's goods were offered for sale as and for the

goods of complainant, uses the following language with respect to a case in which such injury to the complainant was not proven:

> "It loses sight of the thoroughly established principle that a private right of action in such cases is not based upon fraud or imposition upon the public, but is maintained solely for the protection of the property rights of complainant."
>
> *Goodyear Co.* v. *Goodyear Rubber Co., supra.*
>
> *McLean* v. *Fleming*, 96 U. S., 245.
>
> *Wells* v. *Ceylon Perfume Co.*, 105 Fed. Rep., 621.

A consideration of the record here must not only satisfy the court that the whole course of conduct of the Remington-Sholes Company and of defendant is clearly irreconcilable with any purpose of passing off its machines for complainant's but must show also a most striking absence of even those questionable acts of minor character that are found in nearly every case of this kind, where a large business is transacted through many agencies and where the zeal of the salesman is apt to outrun his discretion.

**Foreign Advertisements and Acts by Persons Over Whom Defendant and Its Principal Had No Control.**—It is true that the machines referred to in these foreign advertisements were all made by the Remington-Sholes Company, **but it distinctly appears by stipulation in the record (R. 662) that the machines advertised in the various foreign publications were sold to an independent German company and were in turn sold by such company to the parties by whom the advertisements were made.** No attempt was made to prove that these advertisements came to the knowledge of defendant or of the Reming-

ton-Sholes Company either before or after their publication. Nor has the slightest attempt been made to establish any connection between defendant and such foreign advertisers, nor to show that the Remington-Sholes Company ever had any relations whatever with such parties other than as an outright vendor of its machines.

In the opinion of the Circuit Court it is said with respect to these foreign advertisements, "but the laws of those countries would not govern or vary the rights of parties here in respect to transactions emanating from here, although carried out there." This statement is plainly in disregard of the stipulations in the record with respect to these foreign publications. These publications have nothing whatever to do with "transactions emanating from here, although carried out there;" nor does the record show a single instance of any transaction "emanating from here, although carried out there." On the contrary, the sales of the Rem-Sho machines by defendant's principal to foreign merchants were in all cases *carried out here* by the delivery and receipt of payment for such machines in this country. Advertisements in foreign countries emanated from *there* and were carried out *there* independently of defendant or its principal and without their authority, knowledge or consent.

The statement repeatedly made by complainant's counsel in their former briefs, that these advertisements emanated from "agents *and dealers*" of defendant's principal, is incorect and misleading because the record shows that all advertisements authorized by defendant or its principal were fair and true, while such advertisements as were unfair were put out in foreign countries by independent dealers beyond their control. **Reiteration by counsel of the phrase "dealers and agents," however often**

**repeated, cannot convert dealers into agents, nor make defendant or its principal liable for acts of strangers utterly beyond any agency control.**

This suit is directed against the Howe Scale Company, which, as the bill of complaint asserts, was the sales agent for the *United States* of the Remington-Sholes Company. The bill charges infringement *solely within this country* (R. 8), and is silent as to any injury to complainant's foreign trade or as to any wrong doings in foreign countries. If the Remington-Sholes Company was deemed responsible for these foreign advertisements this suit should have been directed against that company. If, on the other hand (as the record plainly shows), these foreign acts and advertisements were by independent dealers, then the remedy should have been against such dealers and in the countries where the wrongs were committed. Complainant, by the bringing of this suit, has elected its forum, and having limited its complaint to a sales agent for this country alone and to wrong doings alleged to have occurred solely within this country, it is manifestly proper that the testimony should be restricted to the acts of such agent within the specified field of its operations.

The Remington-Sholes Company has undertaken to protect this defendant *against the charges of the bill.* It has not undertaken to shift the issues or to make defendants in this cause of innumerable independent dealers beyond the jurisdiction of this court. The law places no such obligation upon a principal who undertakes the defense of its agent. This court, in its examination of the record in this case, will find an entire absence upon defendant's part of any disposition to suppress or conceal any facts pertinent to the real issue of the bill (*i. e.*, the alleged infringement within the United States) and no

distinction has been made between the acts of the defendant and of the Remington-Sholes Company within their field of action. But the testimony as to the acts of independent dealers over whom it is not pretended that either defendant or its principal had any control, has been uniformly treated as without any fair place or purpose in this record. To have done otherwise than to completely ignore such testimony would have been to burden this record with an interminable mass of depositions and exhibits utterly without bearing upon the real questions at issue.

The Circuit Court, against defendant's objection, has declared this testimony admissible "as a part of the *res gestae* for the purpose of showing the effect upon the plaintiff's trade of putting these other machines (*i. e.*, defendant's) in the market with the name in question upon them" (R. 1497) and has said that "as this is a suit for interference in trade, the boundaries of the dealing and not of governments or countries is material; . . . that the laws of those countries would not govern or vary the rights of parties here in respect to transactions *emanating from here although carried out there.*" The court was plainly in error in assuming that these foreign acts and advertisements of *strangers to this litigation* did in fact show "the effect upon plaintiff's trade of putting these other machines into the market." They show simply that in the war of advertising among foreign dealers in rival machines the bounds of fair dealing have been passed by persons beyond the control of defendant or its principal or of this court; but they give no intimation as to the effect upon the trade abroad of marking machines with the words "REMINGTON-SHOLES COMPANY, Mfrs., CHICAGO," and with the trade-mark "REM-SHO."

The contention of complainant's counsel in the Court of Appeals was that these foreign advertisements were "illuminating and instructive for the court" and that such testimony shows how the "ultimate purchaser is deceived." We quite agree with counsel that the deception of the ultimate purchaser is a rightful test of infringement. But in every case it must be proven that such deception is effected by the *false representations of the defendant* and not of independent dealers over whom the defendant has no control. Even had it been proven (which is not the case) that the foreign advertisements or misrepresentations of foreign dealers had worked an injury to complainant's trade, *such proof would have merely shown the result of such advertisements and misrepresentations* and would have shed no light whatever on the effect of *marking the machines*, for which alone defendant's principal is responsible. The contention of counsel for complainant that defendant is, as it were, *particeps criminis* with these independent foreign dealers in any injury they may have done complainant's trade (although no such injury is asserted) is without force. It might with equal reason be said that the manufacturer of a shot gun was party to a murder committed with such gun by one to whom the gun had been sold in ordinary course of trade.

These foreign advertisers were supplied by the independent German company handling the Rem-Sho machine (see stipulation R. 662) and the highest court of Germany had declared that the name "Remington-Sholes" could be rightfully used. If therefore the German company had a lawful right to use such name upon machines manufactured by the Remington-Sholes Company it could not be said that in thus acting within its

lawful rights it was unlawfully placing in the hands of others an instrument by which the ultimate purchaser might be deceived. If defendant or the Remington-Sholes Company has the right to mark machines with the words "REMINGTON-SHOLES COMPANY, Mfrs., CHICAGO" and with the trade-mark "REM-SHO"—and this is the only real question involved in this case—they cannot be held reprehensible for exercising that right nor for any abuse of the right that may be effected by others. The remedy for such abuse must be had by action against the wrong-doer in a court having jurisdiction over him, for a court of equity of this country will not destroy a right existing here as a means of correcting an abuse of such right by strangers abroad.

The authorities are uniform and conclusive in holding that a manufacturer is not responsible for the acts or wrong doings of mere dealers, and for the obvious reason that between a manufacturer and a mere dealer in his products, no such agency relation necessarily exists as would render the manufacturer liable for the acts of the dealer. Thus, in the leading case of *Coats* v. *Merrick Thread Co.*, 149 U. S., 562 (573), the Supreme Court used the following pertinent language:

> "If the purchaser of such thread desires a particular make he should either call for such, in which case the DEALER if he put off on him a different make, would be guilty of fraud *for which the defendants would not be responsible.*"

See also *Brown Chemical Co.* v. *Meyer*, 139 U. S., 540; *Proctor & Gamble Co.* v. *Globe Refining Co.*, 92 Fed. Rep., 357 (362); *Sterling Remedy Co.* v. *Eureka, Etc., Co.*, 80 Fed. Rep., 105 (108); *Illinois Watch Case Co.* v. *Elgin Co.*, 94 Fed. Rep., 667, 671 (C. C. A.); *National Starch Co.* v. *Duryea et al.*, 101 Fed. Rep., 117.

Plainly, therefore, the Circuit Court and the Court of Appeals were in error in refusing to reject the mass of testimony as to foreign advertisements introduced on behalf of complainant.

We submit also that it was error upon the part of the lower court to consider the secondary evidence introduced by complainant in violation of the plainest rules of evidence. Thus, for example, in their argument below counsel laid great stress upon the "Davis & Rose Letter" (R. 1000); that is a letter purporting to have been written to complainant's Richmond office by Davis & Rose and asking for a catalogue of the "Rem-Sho," adding: "If you do not make this machine turn this over to the proper branch;" and a copy of one of the "Rem-Sho" booklets alleged to have been received at complainant's office and bearing the endorsement "Is this same as your writer?" (R. 999) was emphasized as indicating confusion in trade and was admitted by the lower court as competent evidence. No attempt was made to produce the writers of this letter or this endorsement or to account for their absence or to excuse the introduction of the exhibits on rebuttal.

The incompetency of such testimony is too manifest for argument. We would, however, direct the attention of the court to the readiness with which testimony of this kind may be manufactured *ad libitum*, and when the court considers the testimony of complainant's numerous detectives and their machinations to entrap defendant's salesmen, the marvel must be that there are not many more exhibits of this kind. With its salesmen in every city in the land, in constant contact with the typewriter user in soliciting the sale of supplies and machines, and instructed to report matters bearing upon this litigation

(R. 526, 536, 638), with its close alliance with the four largest typewriter companies in the so-called typewriter trust (R. 197), and with its agents collecting or making evidence for use in this cause for nearly six years, certainly this court will not view with favor secondary evidence as a means of proving complainant's charge that defendant's machines are being foisted on the public for complainant's. Defendant is clearly entitled to be confronted by these witnesses, to cross-examine them and to thus ascertain not only whether they did in fact write these letters, but also whether they were written at complainant's instigation and for the purposes of this case, or whether there was in fact confusion existing in the minds of the writers with respect to defendant's machine.

**The Inquiry, What Connection Between Remington-Sholes Company and Complainant.**

When the Remington-Sholes Company and its predecessor entered the field, complainant had a world-wide reputation. It was but natural, therefore, that salesmen of the Remington-Sholes Company and its predecessor should be often asked "what connection existed" between such companies and complainant. However strenuously it may be argued that the asking of such questions indicates confusion in the public mind, we submit that it warrants no such inference. On the contrary, the very fact of the inquiry indicates a recognition in the mind of the inquirer of the existence of complainant as distinct from the company concerning which such question is asked.

The pertinent fact is not whether the public wondered as to the existence of any *connection* between complainant and the Remington-Sholes Company, but whether it

regarded these companies as *identical*. The situation of a company having the wide reputation of complainant is like that of a public character, yet the circumstance that a common citizen bearing a like name may be asked if he is connected with such public character would scarcely support the conclusion that the inquirer confounded the *identity* of the two. As was said in *Rogers Co.* v. *Simpson*, 54 Conn., 568:

> " The question is not whether the defendant's business is represented as being similar to the plaintiff's, BUT WHETHER IT IS REPRESENTED AS BEING THAT VERY IDENTICAL BUSINESS."

With corporations, as with individuals, inquiries of this kind are the result of a natural curiosity. Thus, in the deposition of Mr. F. L. Sholes (R. 1202 and 1203), we find that while in charge of the Philadelphia office of the Remington-Sholes Company the question was often asked him what connection, if any, such company had with the Remington Machine Company, of Wilmington, Delaware, or with Remington & Sherman Company, of Philadelphia. The testimony shows that these inquiries, which were frequent in the early history of the Rem-Sho machine, gradually became less frequent as such machine came to be better known in the market. (R. 1200-1080-1099-1334.) That inquiries of this kind are without significance was distinctly recognized by the Illinois Appellate Court in the Hazelton Boiler case, *supra*, where the following language occurs:

> " The real question in this case, is, therefore, have the defendants been guilty of fraudulent competition in business, or have they made such use of the plaintiff's name as to deceive, mislead or confuse the mass of purchasers? Some slight confusion has arisen;

INQUIRIES IN QUITE A NUMBER OF INSTANCES HAVE BEEN MADE AS TO WHETHER THE BOILERS MADE BY THE TWO CORPORATIONS ARE THE SAME, AND AS TO WHETHER ONE HOUSE IS A BRANCH OF THE OTHER, but in only one instance does any purchaser appear to have been misled, and that is not one of which the plaintiff can complain."

*Goodyear Co.* v. *Goodyear Mfg. Co., supra.*

*Richardson & Boynton Co.* v. *Richardson & Morgan Co.*, 8 N. Y., 52.

## "The Only Machine Now Made by a Remington."

In their argument before the lower court great stress was laid by counsel for complainant upon the fact that upon the inside of the cover of one edition of the Rem-Sho No. 2 catalogue—the issue of which was discontinued several years ago (R. 1008)—and in one or two advertisements the statement appears, "The only machine now made by a Remington," and upon the fact that some of defendant's salesmen admit the use of such expression when explaining to prospective purchasers and others the history of the Rem-Sho machine, and when refuting the allegation of complainant's salesman that such machine was a "counterfeit." (R. 1102.)

Complainant's counsel, in their brief before the Court of Appeals, quoted *incomplete* extracts from statements in which the expression in question was used, such incomplete extracts being manifestly misleading. Thus, it was said (old brief, p. 179) that in the Phonetic Journal "will be found the statement concerning the Remington-Sholes typewriter, that *'it is the only typewriter manufactured by a member of the well-known Remington family, the original manufacturers of the Remington Standard Type-*

*writer',"* whereas, the *complete sentence* contained the words *"but it is not to be confused in any way with the latter machine."* (R. 887.)

Except for the reason that complainant apparently regards itself as vested with the exclusive right to mention the name Remington in any manner in connection with typewriting machines, it might be difficult to see upon what ground it can be heard to object to the expression "The only machine now made by a Remington," whether the same be true or false. It is not pretended that complainant's machines are made by a Remington. On the contrary, they are distinctly marked "Manufactured by Wyckoff, Seamans & Benedict, Ilion, N. Y., U. S. A." Nor has it been anywhere asserted that any Remington is or ever was in any way associated with complainant. Literally, perhaps, this statement that the "Rem-Sho" was the only machine now made by a Remington was not true, because the Rem-Sho machine was not manufactured by a Remington solely, but by a company of which a Remington was the general manager; but as such expression would be understood by the general public it was true, for there is not one word in the record of this case to show that any Remington is or ever was connected with any concern now making typewriting machines, except the Remington-Sholes Company.

Used, as this expression always has been (when used at all), in connection with the name and address of the Remington-Sholes Company as manufacturers, the public would obviously understand it to mean what it was intended to mean and nothing more, viz., that the "Rem-Sho" was being manufactured by the Remington-Sholes Company, under the direction of Mr. Remington, and that it was the only typewriting machine at such time be-

ing made under the direction of a Remington. It is to be noticed, moreover, that this expression, as used by Rem-Sho salesmen, was not an isolated statement, but was part of the general history of the origin of the machine, as outlined in the Rem-Sho catalogue (R. 1047) and was given after complainant had challenged the right of the Remington-Sholes Company to use its name and had pronounced its machine a counterfeit. (R. 1101.) The fact is clearly shown that whenever and wherever this expression, "The only machine now made by a Remington," has been used, it has been in such connection that no possible confusion in the public mind could be created thereby. This statement being true, therefore, in substance and in fact, falls within the cardinal principle of trade-mark law that equity will not enjoin a defendant against speaking the truth. (*Elgin National Watch Co.* v. *Illinois Watch Case Co., supra.*)

The statement of complainant's counsel in their former briefs (*e. g.*, C. C. A. brief 173) that defendant's machines were not in fact made under the superintendence of Mr. Franklin Remington is plainly disproved by the testimony of their own witness, Mr. Sholes (R. 434; 429), and of defendant's witness, Mr. Hochklassen (R. 1105).

In the leading case of *Canal Co.* v. *Clark*, 13 Wall., 311, which the Supreme Court in a later case said embodied "the philosophy of law applicable to trade-marks (*Lawrence Co.* v. *Tennessee Co.*, 138 U. S., 537), the following language was used by Justice Strong:

> "Purchasers may be mistaken, but they are not deceived by false representations, and EQUITY WILL NOT ENJOIN AGAINST TELLING THE TRUTH."
>
> *Amoskeag Manfg. Co.* v. *Spear*, 2 Sandf. (N. Y.), 599.

*William Rogers Manufacturing Co.* v. *Rogers*, 84 Fed. Rep., 639 (affirmed on appeal, 95 Fed. Rep., 107).

In *Monarch* v. *Rosenfeld et al.*, 39 Southwestern Rep., 236, the Kentucky Court of Appeals had before it a case in which the defendant, a corporation, of which S. I. Monarch was president, manufactured whisky, the barrels of which were labeled with the words "S. I. MONARCH, HAND MADE SOUR MASH." It was contended by the complainant that this was an improper use of Monarch's name, but the court in this connection said:

> "So in my opinion if there is no other reason why S. I. Monarch should not use his name in the business, he has, in view of his conection with this company, and under the opinion and judgment of the Court of Appeals, and the judgment of this court pursuant to that judgment, the right to use his name in this Co., *and to brand his name* on their whiskey barrels; and this Co. has the right, under such authority, as long as S. I. Monarch's present connection with said company exists." (Pp. 338, 339.)

In the case of *Holmes, Booth & Hayden* v. *Holmes, Booth & Atwood Co.*, 97 Conn., 278 (a case that turned upon defendant's estoppel), it was said:

> "Respondents may in any legitimate way indicate to the trade that their business had the benefit of the experience, skill and reputation of these gentlemen (Holmes and Booth.)"

In *National Starch Manfg. Co.* v. *Duryea et al.*, 101 Fed. Rep., 117, the following statement occurs:

> "The statement that the starch is prepared by Duryea & Co., whereas it is manufactured by the Sioux City Starch Company, in the most significant indication of an attempt to deceive; but the evidence in this case, from letters which passed after the date of the contract with that company between the par-

> ties to it, contains stronger and more convincing proof than was presented on the motion for preliminary injunction that the starch was actually being perfected by the improvements suggested or directed by the defendants, and that the manufacture was actually under their supervision." (Pp. 118, 119.)

In *Leather Cloth Co.* v. *American Leather Cloth Co.* (Cox Am. T. M. Cases, 688), 11 Jur. N. S., 513, it was urged before the House of Lords that defendants were guilty of misrepresentation in printing upon their labels the statement, "Manufactured by their manager, late with J. R. & C. P. Crockett & Co." In disposing of this point, Lord Kingsdown said:

> "If this statement be true the defendants are justified in making it; but if it be untrue, however reprehensible the statement may be, it does not constitute a colorable imitation of the plaintiff's trade-mark or amount to an infringement of their rights."

*Jennings* v. *Johnson*, 37 Fed. Rep., 364 (365).

*Tarrant & Co.* v. *Hoff*, 76 Fed. Rep., 959 (961) (C. C. A.).

In *Goodyear Co.* v. *Goodyear Rubber Co.*, *supra*, and in later cases, this court has said in speaking of suits to restrain unfair trade:

> "Relief in such cases is granted only where defendant by his marks, signs, labels, or in other ways represents to the public that the goods sold by him are *those manufactured by the plaintiff.*"

Even admitting, for the argument, that the public being blind to all other reading matter so conspicuously and invariably put forth by the defendant,—its name, its address, etc., etc.—saw only the phrase "the only machine now made by a Remington" and derived therefrom the impression that defendant's machines were being made by a Remington, or even by "the Remingtons" or "the

Remington people," this would offer no ground of complaint, for it would not be passing off defendant's goods for "*those manufactured by plaintiff*," since complainant has no Remington with it, is not "the Remingtons" nor "the Remington people."

**Complainant's Deception of the Public.**—It is with a self-righteousness, truly refreshing, that the sporadic statement that the Rem-Sho "is the only machine now made by a Remington" is challenged by complainant as a fraud, while by asserting a right to the use of the names "the Remington Company," the "Remington people" and "the Remingtons," and by encouraging the public to believe that its machines are in fact made by Remingtons, it is itself creating a false impression on the public mind. Can complainant be heard to say that its machine is "now made by a Remington"? Or is it fair that it should encourage the public to believe that it is in fact the "Remington Company" or the "Remingtons"? If not, then how can the statement, "the only machine now made by a Remington," when used in connection with the "Rem-Sho," be claimed as indicating an intent upon the part of the Remington-Sholes Company to pass off its machine as complainant's?

In *Manhattan Medicine Co.* v. *Wood*, 108 U. S., 218, this court has condemned in no uncertain way, the conduct of a plaintiff who holds out his wares as made by another, although such other be his predecessor. The impression fostered by complainant that its machines are the product of the "Remingtons" or "the Remington Company" or "the Remington people" is as false in fact as its contention that the assignment from E. Remington & Sons (whereby they agreed to remain out of the business ten years) precluded that corporation from forever re-

suming all use of the name "Remington" in connection with the manufacture of typewriters is false in law. Manifestly, complainant cannot decry against the use by any Remington or by any corporation bearing that name, of such individual or corporate name in fair and honest fashion. Not only would it be entirely proper for E. Remington & Sons (if that concern were still in existence) to manufacture typewriting machines and mark them with its name, but the same is true of the Remington Arms Co., or, indeed, of any of the other existing corporations bearing the Remington name.

If defendant or the Remington-Sholes Company has been guilty of wrong-doing by permitting the expression "The only machine now made by a Remington" to be used, regardless of the fact that such use has been in manner incapable of producing deception, or, indeed, has been guilty of any other sporadic act that might injure complainant (although none such has been proven), still under the authorities this would afford no warrant for enjoining the use of the corporate name of the Remington-Sholes Company or the use of the fanciful name "Rem-Sho" upon its machines. In such case the remedy must be directed merely to the specific wongful act.

*Singer Mfg. Co.* v. *June Mfg. Co., supra.*
*Singer Mfg. Co.* v. *Bent,* 163 U. S., 205.
*Burgess* v. *Burgess,* 3 DeG. M. & G., 896.
*Samuel* v. *Berger,* 24 Barb., 163.
*Manufacturing Co.* v. *Spear,* 2nd Sandf., 607.

In this last cited case Duer, J., said:

> "At present it is sufficient to say that in all cases where a trade-mark is imitated the essence of the wrong consists in the sale of the goods of one manufacturer or vendor as those of another, and it is only where this false representation is directly or indi-

> rectly made, *and only to the extent to which it is made* that the party who appeals to the justice of a court can have a title to relief."

**Remington Moscow Affidavit.**—Before the Court of Appeals complainant's counsel dwelt with much emphasis and little fairness upon an affidavit made by Franklin Remington when at Moscow, Russia, in December, 1899, more than a year after the bringing of this suit. The affidavit (subject to defendant's objection) was admitted by stipulation (R. 660-661) and appears in full at R. 983. In their former briefs counsel have quoted *portions* of this affidavit. By reference to its full text this court will see that it was given because of the "false reports" that were being spread by unfair competitors and that it contains the following statement that is conclusive against danger of mistake:

> "(4) That my machines, manufactured in Chicago are known here by the name 'Remington-Sholes,' and should not be confounded with any other machines bearing the name 'Remington.'"

And the affidavit is signed by Franklin Remington as "general manager of the Remington-Sholes Company."

The copy of the affidavit in the record states in its first paragraph that "I am the son of the original inventor and manufacturer of the Remington typewriter," but the stipulation (R. 660-661) shows that the words "inventor and" did not appear in the original affidavit. The attempt of counsel to connect Mr. Remington with certain objectionable advertisements put out by one Hagen, because of the statement in the affidavit that Hagen was "the only agent for the sale of the Remington-Sholes in Russia" is utterly without force in view of the stipulation (R. 660-661), that Hagen's exclusive

agency was *from the independent German Co.*, from which he bought all his machines.

**Alleged Actual Deception of Customers.**

Bearing in mind the fact that the business of complainant and of the Remington-Sholes Company has for a long time been conducted by agents and dealers throughout the principal cities and towns of the United States; that the agents of complainant have been instructed to report to their home office instances of confusion in the trade or the like; that testimony on behalf of complainant for this purpose has been taken at many points; and that complainant alleges that the Remington-Sholes Company was organized for the fraudulent purpose of selling its machines as and for the machines of complainant, the court might naturally look for at least a considerable number of instances in which customers had been deceived into buying the machines of the Remington-Sholes Company for those of complainant. ON THE CONTRARY, IN THE MULTITUDE OF WITNESSES ON BEHALF OF COMPLAINANT, THREE ONLY ARE PRODUCED TO PROVE THAT DECEPTION HAS IN FACT OCCURRED, VIZ., THE WITNESSES WEINGART, DOWNS AND STALLWOOD.

A CONSIDERATION OF THE TESTIMONY OF THESE WITNESSES MUST CONCLUSIVELY SHOW THAT, WHILE THEY MAY HAVE BEEN MISTAKEN, THEY WERE NEVER DECEIVED NOR WAS THE SLIGHTEST ATTEMPT EVER MADE TO DECEIVE THEM.

**The Weingart Sale.**—The purchase by Weingart of a Rem-Sho machine, while under the impression, as he asserts, that it was a Remington typewriter, will doubtless be relied upon by complainant's counsel as the best instance of the deception of a purchaser. An examination of the evidence will conclusively show, however, not only that there was no attempt to deceive Weingart, but that it was made plain to him before his purchase of the machine that it was in no way connected with the Remington Standard and differed therefrom both as to origin and structure.

The most impressive feature of the deposition of this witness is his utter unfairness and unreliability. On his first examination he testified (R. 511) that in the store of Page, Dennis & Company his eye was caught by a sign which he states read "Remington Typewriter Co.;" that thereupon he inquired if they sold the Remington typewriter and was informed that they did; that he purchased a Rem-Sho under the belief that it was a Remington and ordered it sent to Highmount, Ulster County, New York, after being advised that the discount to school teachers would be thirty-five per cent.; that there were no typewriting machines in the store of Page, Dennis & Company at that time, and that he did not examine any; that he looked for the name and address on the machine, but could not find either (R. 513); that he is positive the name "Sholes" was not mentioned, and that "this (*i. e.*, the day of his testimony) is the first time I heard the word Sholes;" that he did not remember ever having seen or heard the name Sholes prior to such day (R. 514); that even if he had been told that the Rem-Sho was made by the Remington-Sholes Company, of Chicago, Illinois, or that it was not made by Wyckoff, Seamans & Benedict,

it would have made no difference in his impression that it was the Remington machine.

On cross-examination, however, Weingart's drilling as a witness fails him. He admits (R. 513) that he does not know what appeared upon the sign in the office of Page, Dennis, & Company; that "there may have been the word Sholes on the sign" (R. 516); that he does not know whether or not the words "Remington-Sholes Co., Chicago, Ills." appeared upon the machine, since, he admits (thus contradicting his former statement), "I never looked" (R. 514); that he is not sure whether or not the names "Remington-Sholes" or "Rem-Sho" were mentioned at the time of his purchase of the machine; and, on re-direct examination, when asked "what reply, if any, did they (at Page, Dennis & Company's) make to your inquiry if they had the Remington typewriter," he finally admits, "*I don't know*, I SUPPOSE they said yes or I would not have bought it."

Against these uncertain and manifestly unreliable statements of Weingart stands the clean-cut testimony of Parker, who was formerly an employee in the office of Page, Dennis & Company, and who sold the machine to Weingart, the testimony of the salesman Hatch, who visited Weingart at his school before the sale, and an array of uncontrovertible circumstances that must conclusively prove not only that Weingart was not deceived, but that he was fully advised in regard to the Rem-Sho machine, its makers and its differences from the Remington Standard. Parker testifies (R. 1279) that he remembers Weingart's call at Page, Dennis & Company's store; that he showed and explained to him both the Rem-Sho No. 2 and No. 3 (R. 1279); that Weingart's is the only instance in which he quoted school teachers' discounts or sold a ma-

chine to a school teacher; that he made out a sales slip (R. 1460), in which a commission on the sale was credited to Hatch; that Weingart talked to no other typewriter salesmen besides himself; that in answer to Weingart's inquiry whether they had a Remington machine, he replied: "No, but we have a better machine, one which combines the best qualities of a Remington with those of a Smith-Premier, and I went to work to explain to him the difference between this machine and the Remington." In his cross-examination Parker reiterates in detail the circumstances of Weingart's call and why he so distinctly remembers it. (R. 1295, 1296, 1300.)

In this connection Hatch testifies (R. 1054) that prior to the sale of the Rem-Sho machine to Weingart he called at the latter's school, left his card (like "Defendant's Exhibit Page, Dennis & Co. Card," R. 1450) and talked to Weingart in regard to the machine. This witness also distinctly recalls that Parker inquired of him as to the discounts to be made to school teachers.

When called as a witness in rebuttal, Weingart states (R. 641) that he does not remember Hatch's call, although he says that "a great many agents hand in their cards to me and I never look at them." On cross-examination he admits, however (R. 646), that he thinks he saw a card like "Defendant's Exhibit Page, Dennis & Co. Card," but whether before or after his purchase of the Rem-Sho machine he cannot say. When complainant's counsel read to him the substance of Parker's deposition, he denies its correctness, but adds: "I do not remember any such conversation. On cross-examination Weingart at first denies positively that he had ever seen the name "Sholes" prior to his purchase of the Rem-Sho machine, but when shown "Defendant's Exhibit Sign from Office

of Page, Dennis & Co." (R. 1447) he admits with marked reluctance, "I certainly have seen a sign— I don't know whether it was this or one similar; I certainly saw a sign." (R. 643.) He further admits that he does not recall whether the name "Rem-Sho" or the name "Sholes" was on the sign (R. 644), but he remembers that the sign was a large one and was on the wall over that part of the store in which Rem-Sho typewriters were sold. He does not remember the name Rem-Sho at all (R. 645), although the invoice, "Defendant's Exhibit Weingart Invoice" (R. 1459), furnished him at the time of the sale, distinctly defines the machine as "1 Rem-Sho," etc. He admits also that Parker may have said that the Rem-Sho was better than the Smith-Premier, and admits that he can not say positively that there was no typewriting machines on exhibition in the store, although in his former examination he denied this.

The testimony is uncontroverted that at the time of Weingart's purchase of the Rem-Sho machine "Defendant's Exhibit Rem-Sho Sign from the Office of Page, Dennis & Co." was upon the wall over the typewriter department of the store (R. 1249) and in the exact location of the sngn that Weingart claims to have seen. This sign, the dimensions of which are about 10x4 feet, reads (R. 1447) **"Rem-Sho Typewriters, Manufactured by the Remington-Sholes Company, Chicago, Ills."** It appears also that on the front show windows of the store of Page, Dennis & Co. there was painted the sign "Remington-Sholes Typewriters" (R. 1256); that there were displayed in these windows large cardboard signs like "Defendant's Exhibit Rem-Sho Pasteboard Sign" (R. 1249); that at the time of Weingart's visit there were also Rem-Sho machines on exhibition (R. 1249), Rem-Sho cata-

logues (R. 1250) to be given out to all inquiring callers, and blotters like "Defendant's Exhibit Rem-Sho Blotter No. 1" (R. 1250) were there for distribution.

The uncertain assertion of Weingart that he was deceived must fall before the statements of the witnesses Parker and Hatch, corroborating as they do these undisputed facts.

Weingart may have been mistaken, but, under the circumstances, it cannot possibly be said that he was deceived. It may be urged, however, that, even if he was not deceived, still his purchase of the Rem-Sho machine upon the supposition that it was complainant's indicates a tendency towards confusion in trade. The conclusive answer to such contention is, *first*, that if the Remington-Sholes Company rightfully used upon its signs the words "Manufactured by the Remington-Sholes Company, Chicago, Ills.," no ground of complaint exists; and, *second*, that if Weingart ignored the information afforded him by the various signs, the business card, the name on the invoice, the name on the machine, not to mention the specific but disputed information as to the differences between the Rem-Sho and the Remington, which Parker says he pointed out to him, he was not using in any degree that ordinary or reasonable caution which the courts invariably require every purchaser to use.

The large sign that attracted Weingart's attention did not offer the Remington typewriter, but, on the contrary, distinctly advertised the "REM-SHO," a name not only totally unlike Remington both in sound and construction, but one that of necessity must be devoid even of suggestion to anyone who, like Weingart, had never before heard or seen the name Sholes. Nor did this large sign mention complainant's name or address, nor anything sug-

gestive of these, but, on the contrary, it distinctly stated that the machines were made by the "REMINGTON-SHOLES COMPANY, CHICAGO, ILLS."

Weingart states that so long as the name "Remington" appeared upon the sign all the rest was to him without significance; that even had the words "Not made by Wyckoff, Seamans & Benedict" appeared it would have made no difference in his impression. (R. 515.) Such carelessness or stupidity the law does not undertake to protect. The effect would have been the same had the name of the firm "Remington & Sherman Company," or "Remington Arms Co.," or of any other existing firm containing the name Remington as part thereof been displayed. The contention, therefore, that force be given to Weingart's mistake must be predicated upon the broad ground that complainant has the exclusive right to the use of the proper name "Remington" not only as a trade-mark upon its machines, but in any combination of corporate or firm name in which it may be used however truthfully with the ordinary *personal* meaning by persons engaged in the typewriter business. As we have already shown, the law recognizes no such exclusive right with respect to personal names.

**The Downs Sale.**—It needs but a glance at the short deposition of this witness to show that he was neither deceived nor misled. His company had been users for many years of the Remington machine (R. 247), which they had been in the habit of buying from Joseph E. Platt while Platt was the New Haven agent of Wyckoff, Seamans & Benedict. Down states that he simply applied to Platt "for A MACHINE"—not a Remington machine—"on the supposition that he was the agent of the Remington Typewriter Co." He says that he did not

get the impression that he had received a Remington machine from any statement made by Platt. His short cross-examination tells the whole story as follows (R. 248):

"8 X-Q. Were the machines which you say your company used for several years—about thirteen years—similar to the machine now on the table before you?

"A. Yes, sir.

"9 X-Q. And were marked with the words Remington Standard Typewriter, Manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A.?

"A. Yes, sir.

"10 X-Q. Did you examine the Remington-Sholes machine that was left with you by Mr. Platt?

"A. No, sir.

"11 X-Q. You do not recall, then, how that machine looked or how it was marked, do you?

"A. It is my impression that the name Rem-Sho appeared upon the machine, but I would not state that as a fact.

"12 X-Q. Do you remember whether the name Remington-Sholes Typewriter Company appeared upon the machine or not?

"A. I do not. The information was given me by the representative of Mr. Platt that the machine was a Rem-Sho.

"13 X-Q. You knew that Mr. Platt had been the agent for the Remington Company prior to the time that he sent the Rem-Sho machine to you, did you not?

"A. Yes, sir.

"14 X-Q. And that was why you applied to him for a machine?

"A. Yes, sir.

"15 X-Q. And that was why you supposed that you were going to get a Remington machine, was it not?

"A. Yes, sir."

Certainly there is nothing in this incident for which the

Remington-Sholes Company can be blamed. The record shows that it is a common practice for typewriter agents or dealers to pass from the employment of one company to that of another. Had Downs ordered a Remington machine, or indicated in any manner that he supposed that he was going to get a Remington machine, doubtless Platt would have corrected the false impression.

**The Stallwood Rental.**—The testimony of Stallwood shows that he was not deceived, and it will not be pretended that any attempt was made to deceive him. He went to the Chicago salesroom of the Remington-Sholes Company, where he says he saw a number of typewriting machines exhibited (R. 483); that he got the address from the Chicago Telephone Directory; that he rented a machine and continued to pay the rental monthly for several months.

J. F. Hobbs was at the time in charge of the Chicago sales office of the Remington-Sholes Company, and his testimony shows that there were a number of signs conspicuously displayed upon the doors, the windows and the walls of the office announcing the fact that the machine sold there was the "REM-SHO" and that it was manufactured by the Remington-Sholes Company of Chicago. The various receipts upon the bill-heads of the Remington-Sholes Company introduced in evidence, and which Stallwood admitted he saw, and the fact that the machine delivered to Stallwood bore the usual name-plate, must conclusively show that no care or precaution whatever was exercised by Stallwood if at the time he rented the Rem-Sho machine he in fact intended to rent a Remington. Stallwood says (R. 485) that he obtained the address of the Remington-Sholes Company from the Chi-

cago Telephone Directory, where it and complainant's name and address appeared in the following order:

> "No. North 572. Remington-Sholes Typewriter Factory, 127 Rees.
>
> "Main 3036. Remington-Sholes Co.; City Salesroom, 204, 126 State.
>
> "No. Main 137. Remington Standard Typewriter, Wyckoff, Seamans & Benedict, 144 Madison."

But although the witness must necessarily have read through both of the addresses of the Remington-Sholes Company in order to ascertain its city salesroom, he says: "I will state that I did not look any further after I saw the name Remington." This witness, like the witness Weingart, knew only the name Remington. It would have made no difference to him what other name or what addresses were associated with this name. It follows, therefore, that unless complainant is entitled to the exclusive use of the name Remington, regardless of its association with other names and regardless of its rightful use by other individuals bearing the same name, it cannot be contended that the mistake of the witness Stallwood was such as can be relieved by a court of equity.

In other words, to sustain the complainant's contention and the decree of the lower court, this court must, like the witnesses Weingart and Stallwood, "look no further" than the name Remington, but must give to complainant a monopoly of that name even when used in such way as to convey, as it did to these witnesses, a purely personal meaning.

**The Law Assumes that Purchasers Will Use Ordinary Care.**—The law applicable to mistakes such as were made by Weingart, Downs and Stallwood is plain from a reading of the authorities. Courts natu-

rally look with indulgence upon a degree of carelessness on the part of purchasers who, in distinguishing a merchant's goods, rely upon some purely fanciful or newly-coined name like "Sapolio" or "Celluloid," or who rely upon some arbitrary or fanciful mark or some peculiar or characteristic "dress" of package, because in each of such cases the public is justified in assuming that the first to adopt such arbitrary or fanciful distinction for his wares is entitled to its exclusive use. In the case of personal names, of geographical names, of descriptive terms or the like, a different rule prevails. The law presumes the public to know that no one can have an exclusive right to appropriate to his wares the use of any such names, and expects the public to avoid relying *solely* upon such names as a means of distinguishing the goods of a manufacturer.

In *Rogers* v. *Simpson et al.*, 9 At. Rep., 395 (54 Conn., 568), the rule is laid down as follows by the Supreme Court of Connecticut:

> ". . . If the first appropriator of his name as a mark adopts the name simply, without any accompanying word or symbol by way of prefix or suffix, another manufacturer of similar goods having the same name, may lawfully impress it upon his goods, if, as in the case at bar, he accompanies it with such designating devices by way of prefix and suffix, as that a consumer who will take note of the whole will not be misled. **And if consumers, who take notice of nothing but the name are misled, and there is consequent loss of trade, it must be borne as the result of the act of taking a name as a trade mark."**

Again, in *Harson* v. *Halkyard et al.* (Sup. Ct. Rhode Island, May, 1900), 46 At. Rep., 271, it was said:

> " No person can acquire a right to use his surname

as a trade-mark or trade name to the exclusion of others bearing the same surname. Unless, therefore, signs, labels and other advertisements of the respondent's are such independently of the name 'Harson' as to deceive the public into the belief that they are buying the goods of complainant when they are buying the goods of respondents, the complainant has no ground of complaint."

In *Centaur Co.* v. *Marshall et al.* (C. C. A., 8th Circuit, October, 1899), 97 Fed. Rep., 785, the rule is thus stated:

"The law imposes no duty upon the appellees to see to it that the careless and indifferent know that the Castoria that they buy is made by the appellant and not by another. They discharge their full duty to the appellant if they so dress their product that one who seeks to ascertain whose manufacture it is can readily learn by a reasonable examination of their wrappers whether it is made by the appellant or by themselves. *Coats* v. *Thread Co.*, 149 U. S., 564, 567, 572, 573. . . . The wrapper of the appellees gives fair warning that the product which it contains is not made by the appellant and that it is not manufactured in New York. It carries on its face the statement 'Prepared by Castoria Medicine Co., Kansas City, U. S. A.,' and the words and letters 'Castoria Medicine Co., Kansas City, U. S. A.' are printed in large black letters which will readily catch the eyes and fasten the attention of any buyer who examines the product to learn its manufacturer."

In *Coats* v. *Merrick Thread Co.*, 149 U. S., 562, the Supreme Court said:

"He (the purchaser) is chargeable with knowledge of the fact that any manufacturer of 6-cord thread has a right to use a black and gold label and he is bound to examine such label with sufficient care to ascertain the name of the manufacturer."

*Scott Co.* v. *Scott Co.*, 15 N. Y. S., p. 325.

*Faber* v. *Faber*, 49 Barb., 357.

The cases are conclusive upon the point that mistakes due to carelessness on the part of purchasers offer no ground for enjoining a defendant whose goods are bought for complainant's. Thus, in *McLean* v. *Fleming*, 96 U. S., 245, Clifford, J., said:

> "A court of equity will not interfere when ordinary attention by the purchaser of an article would enable him at once to discriminate the one from the other."

*Liggett, etc., Tobacco Co.* v. *Finzer*, 128 U. S., 182.

*Sterling Remedy Co.* v. *Eureka Co.*, 80 Fed. Rep., 105 (C. C. A.).

*Gilman* v. *Hunnewell*, 122 Mass., 139.

*Ball* v. *Siegel*, 116 Ill., 137.

*Monroe* v. *Tousey*, 129 N. Y., 138.

*Supreme Lodge K. of P.* v. *Improved Order of K. of P.*, 71 N. W., 470 (Sup. Ct. of Mich.).

*Singer Mfg. Co.* v. *Wilson*, 2 Ch. Div., 477.

*Popham* v. *Cole*, 66 N. Y., 69.

The authorities are conclusive in showing that the determination of what degree of care is to be looked for in the purchasing public must depend upon the character of the article sold, its cost, the class of purchasers and the manner in which the sales are ordinarily made.

Thus, in *Fairbanks Co.* v. *Bell Co.*, 77 Fed. Rep., 869, this court said:

> "In applying the test recognized by the authorities —the likelihood of deception of an ordinary purchaser exercising ordinary care—regard must be had to the class of persons who purchase the particular article for consumption and to the circumstances ordinarily attending their purchase."

And again in *Columbia Mill Co* v. *Alcorn*, 150 U. S.,

460, the Supreme Court of the United States in applying this rule to the case before it said:

> "It is also shown by the testimony in this case that the flour manufactured from spring wheat, such as that dealt in both by the complainant and the defendants, is not sold or bought simply on the brand, but usually, if not always, by actual sample, and the proof fails to establish that the brand of the appellees was calculated to mislead, or did actually deceive or mislead anyone into supposing that the flour of the complainant was being bought. So it cannot be said that the defendants were personating the complainant's business by using such a description or brand as to lead customers to suppose that they were dealing with the appellant. Even in the case of a valid trade-mark the similarity of brands must be such as to mislead the ordinary observer."

In the case of *Morse* v. *Worrel*, Price & Steuart cases, p. 8, it was said:

> "When an article is costly or is used principally by persons above the ordinary standard of intelligence and is likely to be closely inspected, the danger of deception would necessarily be less than in the case of an article of stove polish sold at retail for ten cents and used chiefly by the humbler and more ignorant classes. (*Monro* v. *Smith*, 59 Hun., 624)."

Certainly, considering the expense of high grade typewriting machines like complainant's and defendant's, the intelligence of the class of persons who purchase and use them and the fact that it is a common practice to sell them upon trial gives ample warrant for expecting a degree of care and attention in their purchase above the casual attention that is given by purchasers of ordinary, cheap commodities such as patent medicine, thread, soap, etc.

The contention of complainant's counsel that many purchasers of typewriting machines are not users, and hence

not familiar with the machine, is but a captious one. Purchasers of typewriting machines are in the main of two kinds, viz., operators and those who purchase for operators. It would be absurd to contend that with a machine so universally known as complainant's any operator could be mistaken or misled into the purchase of a Rem-Sho or any other machine for it. On the other hand, if the non-using purchaser bought a Rem-Sho or other machine supposing it to be a Remington, the operator would speedily advise him of his mistake.

**The Phillips Transaction.**—In the course of the rebuttal testimony, attempt was made to prove that one H. W. Phillips had purchased a Rem-Sho machine, supposing it to be a Remington machine, or a machine sold by complainant. Complainant's testimony concerning the Phillips transaction was objected to as manifestly not proper rebuttal and as incompetent, but if considered it must show clearly the extremes to which complainant has resorted in its effort to sustain the charges of its bill of complaint.

The testimony offered by complainant with respect to the Phillips matter is found in the deposition of George T. Newton, the manager of complainant's New Haven office. (R. p. 618.) Newton testifies that on January 9, 1900, he received a letter in an envelope addressed to the "Remington Typewriter Agency, New Haven, Conn.," the letter bearing the signature of H. W. Phillips. A reproduction of this letter is found in the Record, page 940, and it reads as follows, viz.:

> "Some six weeks ago I bought a new Rem. typewriter at your New York office, giving in exchange and old model No. 6. For various reasons, I have not been at all satisfied with the trade, the new ma-

chine not giving anything like the satisfaction derived from the old. I now beg to inquire if I can not in some way get back my old typewriter or one of the same series or model. Inasmuch as I paid a heavy difference for the new one and have only used it about six weeks, it appears that we ought to exchange with a financial difference in my favor. However, I will be pleased to receive one of your salesmen any evening at my residence. Please write and state what evening I may expect him, as my time is so occupied that an appointment is quite necessary if I am to meet him."

Phillips was not produced as a witness because, as Newton alleges, he could not be found. (R. 620.) Newton states that on the evening of January 9, 1900, he called at Phillips' residence and found there a Rem-Sho typewriter. He states also that at that time Phillips exhibited to him the bill or invoice of said machine. An alleged copy of this invoice, which was marked for identification "Copy of Phillips' Bill" (R. 620), read as follows, viz.:

"N. Y. Nov. 12, 1899.

H. W. Phillips, To Remington-Sholes Co., Dr.,

| | |
|---|---|
| One Pica hd 4-1736 | 95.50 |
| By old machine | 45.00 |
| | 50.50 |

Received payment

J. E. A."

From the cross-examination of Newton it appears that on January 10, 1900, he wrote to complainant's New York office with regard to the Phillips matter, enclosing the Phillips letter (R. 624 and 626), and subsequently he exchanged with Phillips and upon an even basis (R. 625) a new No. 6 Remington machine for the old Rem-Sho machine, which was offered in evidence as "Complainant's Phillips Exhibit Rem-Sho Typewriter." (R.

620.) He states further that Phillips afterwards, at his request, and, as he thinks, some time in February, 1900, visited complainant's New York office.

**The testimony in surrebuttal with respect to this matter clearly shows that the Phillips transaction was a fraud from start to finish,** and was designed for the two-fold purpose, first, of procuring a new No. 6 Remington machine for a second-hand Rem-Sho; and second, of manufacturing evidence to be used in this cause. The Rem-Sho machine obtained from Phillips by Newton is a No. 4 model and bears the serial No. 5376 (R. 1375), this number appearing at the bottom of the front foot of the machine, where all serial numbers are marked in No. 4 Rem-Sho machines.

The testimony of Joseph E. Platt, the New Haven manager for the Manhattan typewriter, called as a witness in surrebuttal, shows that about November 1, 1899, Platt ordered from the Remington-Sholes Company of Chicago a Rem-Sho machine which bore the number 5376 and was shipped to his New Haven office on November 3, 1899. (R. 1415.) The date of shipment of this machine to Platt is clearly proven by the testimony of Fred. W. Payne, then, as now, shipping clerk at the factory of the Remington-Sholes Company (R. 1416), and by the factory record. The testimony of Payne also shows the fraudulent character of the alleged Phillips invoice, as machine No. 1,736 mentioned therein was not a No. 4 machine, was never shipped to New York City, but was shipped to Berlin, Germany, in December, 1898. (R. 1415.)

Platt further testifies that after the receipt of this Rem-Sho machine No. 5,376 he rented it for several months to different parties and then co-operated with Phillips in his

plot to procure in exchange for it a new No. 6 Remington Standard. To this end the Rem-Sho machine was delivered to Phillips' house about the 1st of January, 1900, by Mr. George R. Bradley, who at that time was a clerk in Platt's office, but who within a short time thereafter became and now is a salesman in complainant's New Haven office. (R. 1383.) The testimony of Platt also shows that Phillips took this Rem-Sho machine No. 5,376 for the sole purpose of trading it for a new No. 6 Remington, as he understood that Wyckoff, Seamans & Benedict were ready to trade their new machines for old Rem-Shos on an even basis, if no cash in addition could be procured. (R. 1377.) He did not give Platt for the old Rem-Sho either any cash or a second-hand machine, as alleged in the "Phillips Letter" and invoice. (R. 1376.) Having obtained the Rem-Sho machine, Phillips at once wrote to complainant's New Haven office the letter that has been offered in evidence. Mr. Newton, the New Haven agent, as his testimony shows, promptly responded to this letter, and made the exchange with Phillips, who thereupon gave the new Remington No. 6 to Platt, and he in turn exchanged it for several second-hand machines, (R. 1379.)

While Phillips, with the co-operation of Platt, succeeded in obtaining a new Remington No. 6 typewriter for a second-hand Rem-Sho, thus accomplishing the first object of the Phillips plot, we scarcely think that the court, in the light of the evidence, will permit the second obvious purpose of this plot, viz., to show that confusion existed, to be attained.

Aside from the fraudulent character of the transaction so fully disclosed by the testimony of Platt and Bradley, it is clearly proven by both these witnesses that there

could not possibly have been any confusion in Phillips' mind with regard to the Remington and the Rem-Sho machines. Phillips was an advertising solicitor for the "New Haven Leader," and so had been for nine months before the transaction in question. (R. 1388.) Platt's office (the agency of the Manhattan typewriter) was located across the street from complainant's New Haven office, and Pratt says that Phillips was up and down the street "fifty times a day" (R. 1378), while Bradley admits that he passed the office frequently. (R. 1384.) Complainant's New Haven office, at its employee Bradley states, had its front windows "decorated with our large Red Seal, which is, I believe, the trade-mark," and in front of the office window a large sign bearing the name "Remington Standard Typewriter," and the name "Wyckoff, Seamans & Benedict." (R. 1388.)

**Alleged Deception of Purchasers by Scorer.**

In his direct examination, complainant's witness Scorer (R. 350) testified that he believed that a Mrs. Vance, then residing at Sharpsburg, "bought a Remington-Sholes machine, supposing that it was manufactured by the Remington people;" and in his cross-examination he gives the names of the following additional persons who he says bought Rem-Sho machines believing them to be Remingtons, viz., Williams, Sloan & Griffiths, Greensburg, Pa.; Robbins & Kunkle, Greensburg, Pa., and Halstead & McNaugher, Pittsburg, Pa.

While the statement of Scorer that the parties mentioned were deceived was manifestly incompetent, the testimony of the parties themselves being the only proper evidence to such fact, *all of these parties were produced as witnesses on behalf of defendant*, and their evidence

makes it entirely plain that in none of the cases was any deception attempted, nor did any confusion exist.

**The Mrs. Vance Transaction.**—It is a noticeable fact, appearing from both complainant's and defendant's records (R. 708 and R. 1219) that during the taking of Scorer's deposition in Pittsburg, and while he was so glibly testifying that Mrs. Vance had been deceived, **Mrs. Vance was present in an adjoining room, having come there at the request of complainant.** But complainant's counsel did not place her upon the stand. The testimony of Scorer shows (as does that of Mrs. Vance and various other witnesses) that Mrs. Vance was a stenographer of long experience, and for many years had used the Remington machine; that she was well acquainted with the Pittsburg office of complainant, and was a frequent visitor to that office prior to the transaction in question. (R. 586.) It further appears that she knew that the Remington machine was made by Wyckoff, Seamans & Benedict at Ilion (R. 1210), and that the Rem-Sho was a competing machine. (R. 1211.) It appears from Scorer's deposition (R. 366) that she declined to buy a Remington machine because of her personal dislike for the Remington agent.

She testifies, when called as a witness for defendant, that "she never supposed that the Rem-Sho was the same as the Remington" (R. 1210); that she merely took the Rem-Sho machine on trial (R. 1208); that when Scorer first called he explained to her the advantages of the Rem-Sho over the Remington (R. 1209); that Scorer informed her that the Rem-Sho was as good as the Remington; that it was a new machine and that one of the parties who was connected with it had *once been connected* with the manufacture of the Remington (R. 1212); but that

she knew that the Rem-Sho was not made by the same persons who made the Remington, and that it wasn't a Remington. (R. 1212.)

Subsequently Mrs. Vance was recalled by complainant and was shown a typewritten statement (R. 572) alleged to have been dictated by her to a Miss Stein (whose married name is Ferguson). With respect to this statement her testimony is very clear that the body of such statement was dictated to Miss Stein by Mr. Thomas F. Crean and that she objected to the contents of the statement as not being correct. (R. 575.) Mrs. Ferguson (*nee* Miss Stein) when called as a witness for complainant, says that Mrs. Vance dictated the statement, but admits on cross-examination that *Crean did make some suggestions* that were incorporated in the statement. (R. 588.) No attempt was made to produce Mrs. Ferguson's note-book in which she claims to have taken down Mrs. Vance's statement, nor was any search made for the note-book, which would have shown what changes were made in the course of the dictation of the statement. (R. 587.)

Crean testified, when recalled as a witness, that Mrs. Vance dictated the statement and that she made no corrections therein. His testimony was given after Mrs. Vance had left the stand and the allegation made by him that her husband said that Mrs. Vance would not go on the witness-stand unless paid $50 is manifestly unworthy of consideration in view of the admitted fact that Mrs. Vance was closeted with counsel for complainant when Scorer gave his deposition, and could have been had by subpœna at any time. (R. 600.)

A reading of Crean's answer to Q. 10 of his last deposition (R. 591) and a comparison thereof with the typewritten statement and a comparison also of this statement

with the deposition of Mrs. Vance must clearly show by its very language that it was framed by Crean and not by Mrs. Vance. Thus, Crean says (R. 592) in regard to his interview with Mrs. Vance, "I had a conversation with her and told her that I understood she had purchased a Remington-Sholes typewriter about a year previously, and that when she purchased such machine she was given to understand that *it was a species of Remington machine.*" The fact also that the bill of complaint (*filed a year before the Vance transaction*) charges the sale by defendant of Rem-Sho machines as a "species" of Remington machine and that the alleged statement of Mrs. Vance is drawn in the technical language employed by the bill of complaint and by Crean and not in such language as would be expected from a woman, will surely not escape the notice of the court.

In the course of his cross-examination Crean makes an admission, however, with respect to this Vance transaction which clearly establishes the fact that Mrs. Vance did not understand that the Rem-Sho machine was in any sense a product of complainant's factory, as will appear from the following question and answer (R. 597):

> "X-Q. 36. Did you not understand from her that she supposed the Rem-Sho was the same make of machine that she had been using or was manufactured by the parties who were at that time making the familiar Remington machines? Is that correct?
>
> "A. Not so far as the make of the machine is concerned, but *not that it was manufactured by the same people who were at that time making the Remington,* but that it was a Remington machine inasmuch as it had been invented and put on the market by the same people who invented and put the other Remington on the market. This was my understanding of her conversation."

In the light of the statement of Mrs. Vance, the fact that she had long been familiar with the Remington machine, its Pittsburg agent and office, its place of manufacture, and that she understood that the Rem-Sho was a competing machine of different manufacture, no force whatever can attach to the allegation of Scorer that she was deceived at the time she took the Rem-Sho on trial.

**Williams, Sloan & Griffiths Purchase.**—The testimony of Mr. Williams, of the law firm of Williams, Sloan & Griffiths, when called as a witness on behalf of defendant, clearly refutes the allegation of Scorer that the sale of the Rem-Sho machine to such firm was an instance of deception or mistake. Mr. Williams testifies (R. 1221) that his firm were old users of Remington machines; that he always understood that such machines were made by Wyckoff, Seamans & Benedict (R. 1222), and that they had always dealt with Mr. Martin, complainant's Pittsburg agent, whom witness had known for twenty-five years. This witness further testifies that before the purchase of the Rem-Sho it was taken on trial for several weeks; that he understood that it was made by the Howe Scale Company; that he gave an old Remington in part payment for it; that he understood the Rem-Sho to be a competitor of the Remington; that Scorer explained to him that "Rem-Sho" was an abbreviation for "Remington-Sholes," and that witness, "as a chaffing remark," insinuated that there might be likelihood of deception, although, as the witness very naturally adds, "It did not have on my mind the impression I suggested." (R. 1226.)

This testimony of Williams clearly refutes the statement of Scorer as to confusion or deception in the Williams, Sloan & Griffiths sale.

**Halstead & McNaugher Sale.**—When Mr. McNaugher was called as a witness for defendant, he made plain the fact that there was no deception or confusion in connection with the purchase by his firm of the Rem-Sho machine. He says that his firm had used Remington machines until 1898 (R. 1227); that they then bought a Rem-Sho at the suggestion of Mrs. Vance and gave their old Remington in part payment. He produced an invoice (R. 1228), in which the machine is billed as a "Rem-Sho," and in which the old machine is specified as a "Remington." He further testifies that at the time of the transaction in question he knew that the Rem-Sho was made in Chicago, and that the Howe Scale Company was its agent; that prior to the purchase of the Rem-Sho he had had business with the Pittsburg office of complainant. McNaugher further states that at the time the sale was made, Scorer compared the Rem-Sho with the Remington (R. 1229), and witness understood that the Rem-Sho was not made by the same parties who made the Remington, but was a competing machine. (R. 1229.)

This testimony plainly shows that there was no deception or confusion connected with the Halstead & McNaugher sale.

**Robbins & Kunkle Sale.**—The record shows (R. 1361) that the law firm of Robbins & Kunkle had for a long time been users of the Remington machine. Mr. Kunkle, who negotiated the purchase of the Rem-Sho from Scorer, testifies that they gave their old Remington machine in part payment, and the invoice furnished them by the Howe Scale Company shows this fact (R. 1464), as does also a contemporaneous written agreement be-

tween this firm and the Howe Scale Company. (R. 1464.) Kunkle further testifies that at the time of the sale Scorer pointed out the advantages of the Rem-Sho over the Remington (R. 1364), and gave witness to understand that the Rem-Sho was a different machine and *made by different persons from the makers of the Remington with which it was in competition.*

The witness further states (R. 1365) that Scorer delivered his business card with the name Rem-Sho and a picture of a machine thereon, explained that the Rem-Sho was made in Chicago, was a new machine and made by a new concern, and explained also that the name Rem-Sho was an abbreviation for Remington-Sholes. On cross-examination Mr. Kunkle further states (R. 1366) that Scorer informed him that some one *who had been connected* with the manufacture of the Remington machine was interested in the manufacture of the Rem-Sho; that as witness recalls the name of such person was Remington, but that at that time such person *"had severed his connection with the Remington people entirely."*

From the depositions of the various witnesses whom Scorer claims to have misled or deceived at the time they purchased the Rem-Sho machines it is manifest that there is not one word of truth in such part of Scorer's testimony. The testimony of these witnesses also conclusively proves the falsity of Scorer's statement that he believed the Rem-Sho and Remington to be the same machine during the time he was engaged in selling the former.

**Carcaba Advertisement.**—In the course of his deposition as a witness on behalf of complainant, Byron A. Brooks (who has long been connected with complainant and who is a stockholder in the so-called typewriter "Trust") (R. 196) states that on the 8th of March, 1899,

he visited St. Augustine, Florida, and saw there copies of the St. Augustine Daily Herald in which the defendants' typewriter was advertised. (R. 192.) Brooks produced three copies of the Herald dated respectively January 23, February 8 and February 10, 1899 (R. 193), and these were introduced in evidence by complainant. Carcaba was the local dealer for the Rem-Sho machine and in advertising such machine used a wood-cut thereof in conjunction with the words "Remember the name, the Remington-Sholes Standard Typewriter." (R. 194.)

Brooks states that he called upon Carcaba, who was a cigar manufacturer, and saw a placard upon the wall of his store advertising the Rem-Sho machine (R. 195), saw there the usual Rem-Sho catalogue describing such machine (R. 202) and was informed by Carcaba that he was selling the Rem-Sho machine. He further states that Carcaba told him that it was an improved Remington "invented by the son of the man who invented the Remington typewriter, who had associated with him Mr. Sholes of Chicago." It is admitted by stipulation (R. 1354) that Carcaba bought the Rem-Sho typewriters from the Remington-Sholes Company; that he was the local dealer for the territory including St. Augustine; that he was originally appointed by Page, Dennis & Company, and that his dealership was continued by the Remington-Sholes Company.

From the same stipulation it also appears that under date of February 20, 1899, Mr. Fay, the president of the Remington-Sholes Company, having been advised of the Carcaba advertisement in question, immediately wrote to Carcaba protesting against his use of the word "Standard" in such advertisement (R. 1473), and that thereupon Carcaba at once changed his advertisement to read "Remember the name, the Rem-Sho Typewriter;" that

said changed advertisement was published by Carcaba in the St. Augustine Daily Herald between February 22 and March 2, 1899, and from that time forth whenever said Carcaba advertised said typewriter. (R. 1354.) Brooks states (R. 202) that he went to the office of the Herald to see the changed advertisement of Carcaba; that the only paper he could get was the one introduced in evidence, and that he could not find that any change had been made. It is singular, to say the least, that although Carcaba's new advertisement *admittedly appeared in the Herald immediately before Brooks arrived in St. Augustine,* he was unable to find this advertisement, although he succeeded in procuring *three* copies of the older one to which Mr. Fay had objected. We submit that no intention to confuse or mislead the public can be predicated upon this suppressed Carcaba advertisement.

The record shows that the word "Standard" is truly applicable to any high-grade machine such as the Rem-Sho, and that it is commonly used by the typewriter companies in the typewriter "Trust" in describing their different makes of machine. (R. 1087 and R. 1470-1472.) Thus the Yost, the Densmore, the Caligraph are all designated as "standard" typewriters. The advertisement in question gave the name and address only of Mr. Carcaba, and the intending purchaser, even if he was confused by the words "Remington-Sholes Standard Typewriter" and was led to the Carcaba store supposing that he might find there the usual Remington standard machine, would have been met with the Rem-Sho signs and catalogues that were admittedly displayed there and which gave not only the name and address of the makers of the Rem-Sho, but also a full history of the machine, and the statement that it had not connection with complainant's machine, in the light of which no confusion could possibly exist.

**Diamond Supply Co. Advertisement and Sign.** —The record shows (R. 1394) that in March, 1899, the Diamond Supply Company, of St. Joseph, Mo. (a trade-name adopted by the firm of Bates & Pennewill), undertook the dealership of the Rem-Sho machine. They bought *only one* Rem-Sho typewriter, and have *it still, as they never sold any.* (R. 1395.) After their purchase of the Rem-Sho machine they inserted an advertisement in the St. Joseph Sunday Herald. (R. 523 and R. 958.) This advertisement specifies the typewriter as "The REM-SHO, Remington-Sholes, STANDARD TYPEWRITER," shows an illustration of the machine and makes various statements with respect thereto, including the statement in bold-face type that it is "NOT IN THE TRUST." This advertisement was not submitted to the Remington-Sholes Company before its publication (R. 1400), and there was no agreement whatever between the Diamond Supply Company and the Remington-Sholes Company whereby the latter might control such advertisement.

What has been said with respect to the Carcaba advertisement applies, therefore, to the advertisement of the Diamond Supply Company. Certainly an inspection of such advertisement must convince the court that it could not produce confusion or deception in the public mind. That it did not do so, or indeed have any effect whatever, is evidenced by the fact that the Diamond Supply Company did not sell a single machine. Indeed, complainant's witness, testifying with respect to this advertisement, says (R. 525) that he did not pay a great deal of attention to it at the time, but merely mailed a copy of the paper to complainant's Kansas City office *as there was a standing order or an understanding that salesmen were to keep complainant posted on all matters transpiring in their territory.* (R. 526.)

In its rebuttal testimony complainant's witness Holton states (R. 524) that in the early part of May, 1899, he noticed a sign in the window of the Diamond Supply Company containing simply the name "Remington," the purpose of such testimony being to convey the impression that the sign in question was meant as an advertisement of the Rem-Sho typewriter. No reason was given why complainant did not introduce this testimony while its *prima facie* proofs were being taken, and the suspicion that the testimony was designed to convey a false impression is confirmed by the deposition of Mr. Bates when called as a witness in surrebuttal on behalf of defendant. Bates testifies (R. 1397) that the store of the Diamond Supply Company occupied two adjoining buildings that were connected by a doorway; that in May, 1899, the Diamond Supply Company undertook the agency for the sale of the Remington bicycle and purchased one wheel from the Remington Arms Company; that this wheel was enclosed within a paper case upon which was printed the name "Remington," and that he cut the name from the case and displayed it in the window in connection with the Remington wheel. The testimony of this witness shows (R. 1398) that at such time the Rem-Sho typewriter was in a position for use in the adjoining store and where it could not be seen from the window in which the Remington wheel and its sign were displayed. A reading of the deposition of Bates conclusively proves that there was not the slightest intent to use the name Remington in connection with the Rem-Sho typewriter.

## Alleged Unfair Conduct of Rem-Sho Dealers.

**The Charge of Misrepresentation Alleged in the Bill of Complaint is Utterly Unsupported by the Proofs.**—The witnesses produced to establish this charge are Crean, one of complainant's employees and its chief detective; Lewis, a man hired to accompany Crean in the attempt to entrap defendant's salesmen; Miss Danaher, an employee of complainant who attended Crean on a similar mission; Scheumaker, a hired detective; Scorer, a former employee of defendant, but now in the service of the Typewriter Trust; and Holton, another of complainant's employees. From such an aggregation disastrous results might well be looked for, but fortunately defendant has been able to refute the testimony of these witnesses at every point.

Thomas F. Crean, while manager of complainant's Pittsburg office, was detailed for detective service in this case. (R. 105.) For this purpose he visted the cities of Montreal, Baltimore, Washington, Philadelphia and Camden, and in each place he went with a lie upon his lips and under an assumed name.

In considering the testimony of complainant's witnesses Crean and others, who went "trapping," as the English decisions term it, the court will perceive the force of the folowing pertinent language of Byrne, J., in the recent case of *Truefit* v. *Edney,* 20 R. P. C., 321:

> "When a party goes in who has his mind full of catching another through the medium of a trap, he goes with his mind full of the kind of answer he expects to get, and the kind of question he is going to put."

**Crean's Montreal Visit.**—Crean testified that on August 7, 1898, he called at the office of Messrs. Clement & Clement in Montreal, who at such time were engaged in the sale of various typewriters, the Rem-Sho among others. He says that he informed Mr. Clement that he had called at the request of others to look at a Remington machine (R. 128), which was manifestly false, and that he had called to learn the address at Montreal of the office of the Remington typewriter, which he admittedly knew. (R. 128.) He further testifies that Mr. Clement informed him that that was the office of the Remington typewriter in Montreal, after which he was taken to an outer room and was shown a Rem-Sho machine, which he states, however, was pointed out to him as a Remington machine. Crean further testifies that Clement told him that the machine was made by the inventors and former manufacturers of the old Remington machine, and that it was the new improved Remington machine; that "Mr. Sholes had made some recent improvements on the old Remington and that such machine was the result of the combined efforts of the Remington people and Mr. Sholes."

These allegations of Crean, when considered in the light of the facts admitted in his testimony, must appear not only improbable but incredible. He admits that upon the door of Mr. Clement's office was painted the sign "REMINGTON-SHOLES TYPEWRITER" (R. 106), and that Mr. Clement gave him one of the usual "Remington-Sholes catalogues, a large quantity of which were on the table in the salesroom." (R. 107.) He admits also that a number of Rem-Sho machines were exhibited and, as he believes, bearing the words "REMINGTON-SHOLES COMPANY, MFRS. CHICAGO." (R. 134.) Now,

having in mind these admitted facts and the further fact that the catalogue of the Remington-Sholes Company makes plain the origin and history of the Rem-Sho machine, and disclaims all connection with complainant's machine, one must assume that either Mr. Clement was both fool and knave in making the statements attributed to him or that the witness has not spoken truly.

The deposition of Mr. Clement, however, must set at rest any question as to the truthfulness of Crean's statements regarding his Montreal visit. Clement denies emphatically (R. 1308) not only that he ever made such statements, but says that in view of the threatened litigation he had instructed his salesmen to use the greatest precaution to prevent any possibility of confusion arising by reason of the appearance of the name of the Remington-Sholes Company in connection with the machines offered for sale. (R. 1322.) This witness was asked in cross-examination the following pertinent question (R. 1318):

> "X-Q. 97. Now in your opinion as one having knowledge of the trade, don't you think that the title Remington-Sholes, is likely to lead to confusion between a machine manufactured by the Remington-Sholes Company and the Remington Standard Typewriter?"

He answered:

> **"A. My experience of two years with the Remington-Sholes has shown me that no such confusion has ever arisen and my opinion is necessarily based on my experience."**

Certainly, in the light of the testimony of Clement and of the facts admitted by Crean, no force whatever can attach to the testimony of Crean with respect to his Montreal visit.

The fact that Mr. Clement did not recall the Crean visit is of no importance (*California Fig Syrup Co.* v. *Taylor Drug Co.*, 14 R. P. C., 564, High Court of Appeals). The folowing language of Farwell, J., in *Ripley* v. *Griffiths*, 19 R. P. C., 591, is pertinent:

> "Of course one looks with a certain amount of suspicion on a trap set, because it is quite obvious that people go there with the intention of successfully trapping and they are apt—possibly unconsciously, but at any rate they are apt—to set their trap in the way that traps are usually set, so that it will not be seen. If you want the court to rely upon the testimony of persons trapping, when they have completed their trap and have got the victim in it, the least they can do is to tell him that that is the occasion that they are going to give evidence about in court, so that, then and there, he may be able to recall and recover his recollection of the circumstances and be ready to give his account in court, so that the court should not be asked to rely upon the testimony of the witnesses for the plaintiff on the ground that the defendant cannot possibly remember what took place."

**Crean's Baltimore Visit.**—Crean further testifies (R. 108) that on October 4, 1898, he called at the office of the Tribune Cycle Company in Baltimore and saw their representative, J. T. Gillelan, the Tribune Cycle Company being at such time the representative of the Howe Scale Company for the sale of the Rem-Sho typewriter. He told Gillelan that he had called at the suggestion of a Mr. Johnson, of Washington, who he said had advised him that he (Gillelan) had an improved Remington typewriter; that while examining the machine he asked Gillelan the direct question, "Is this a Remington machine?" to which he says Gillelan replied: "Yes, it is the new Remington; it is manufactured by the former

manufacturers of the old Remington and was invented by the inventors of the old Remington;" that Gillelan repeatedly said: "It is the new Remington and it is a decided improvement over the old Remington."

Upon this visit Crean was accompanied by an assistant detective—hired for the occasion (R. 256)—Roger E. Lewis. *This witness testified from a written memorandum made in duplicate by Crean* (R. 252), and as long as he adheres strictly to the memorandum he is found to corroborate Crean and avoid telling the truth. But when Lewis departs from his memorandum we begin to get an intimation of the fact that no attempt whatever at deception was made by Gillelan.

The facts admitted by Crean and Lewis are plainly at variance with any attempt upon the part of Gillelan to misrepresent the Rem-Sho machine. Thus both Crean and Lewis admit that they saw in Gillelan's office the usual catalogues of the Remington-Sholes Company. (R. 108.) Crean admits that Gillelan stated that his company was the representative for the sale of the "Remington-Sholes" typewriter in Baltimore, and that there were eight or ten Rem-Sho machines displayed. He also says:

> "Mr. Gillelan told me that the Mr. Remington and Mr. Sholes, whose names were applied to the machine which he was offering, formerly made the old Remington which they sold some time ago to people called Wyckoff, Seamans & Benedict. That these latter people were now making the old Remington, so that the old Remington was no longer being manufactured by the Remington people, but by three individuals, Wyckoff, Seamans & Benedict, and that the only typewriting machine which the Remington people were now offering was the Remington-Sholes typewriter."

Mr. Lewis, when asked what kind of typewriting machines were exhibited in the store of the Tribune

Cycle Company, answered: "The machine was known as the Rem-Sho" (R. 250); "and bore that name" (R. 253); that the catalogues that he saw displayed there set forth in detail the Rem-Sho machine. (R. 253.)

Departing from his memorandum, Mr. Lewis begins to tell the truth in regard to the Gillelan interview, as will appear from the following questions and answers (R. 253):

"X-Q. 16. Is it not a fact that Mr. Gillelan said in substance that the Rem-Sho machine was an improvement on the old Remington?

"A. No it is not. I WAS PUT UNDER THE IMPRESSION BY MR. GILLELAN THAT HIS MACHINE HAD NO CONNECTION WHATEVER WITH THE STANDARD REMINGTON, but as he stated in answer to a question of Mr. Crean's, that it was an improved Remington.

"X-Q. 20. You the positive, are you, that the name Wyckoff, Seamans & Benedict was not mentioned during that conversation?

"A. The name of Wyckoff, Seamans & Benedict was mentioned once, as I remember, by Mr. Gillelan.

"X-Q. 21. In what connection?

"A. Wherein he stated that Mr. Remington and Mr. Sholes had sold the old Remington to the people mentioned.

"X-Q. 22. And did Mr. Gillelan state that said latter people were then making the Remington typewriter?

"A. I think he did.

"X-Q. 23. DID YOU HEAR MR. GILLELAN DESCRIBE TO MR. CREAN ANY OF THE ADVANTAGES OF THE REM-SHO MACHINE OVER THE REMINGTON TYPEWRITER?

"A. I DID.

"X-Q. 32. And do you not recollect whether or not he (Gillelan) said that that was the office of the Remington-Sholes Company?

"A. I do not."

These statements and admissions of Lewis, while not in keeping with the facts, show plainly that there could have been no attempt upon the part of Gillelan to represent the Rem-Sho as being the same as the Remington or Remington Standard, *first,* because he described to Crean its superiority over the Remington; *second,* because he stated that it was not manufactured by Wyckoff, Seamans & Benedict; *third,* because he exhibited the machines themselves which bore the name and address "REMINGTON-SHOLES COMPANY, MFRS. CHICAGO;" and, *fourth,* because he displayed the catalogues, one of which Mr. Lewis took, which gave the full and true history of the machine and of its company. It is inconceivable that Gillelan, thus offering the Rem-Sho as a machine competing with and superior to the Remington, should have attempted to represent it as being the same machine, either as to structure or origin.

But a consideration of the testimony of Mr. Gillelan, at present the agent for the Manhattan typewriter (R. 1325), clearly refutes the statements of Crean and Lewis. Gillelan produces the Rem-Sho business card used by him, which clearly shows no attempt in this particular at confusion with complainant's machine. (R. 1450.) He specifically denies the statements of Crean and Lewis and explains that he, like other salesmen of the Rem-Sho machine, had been instructed to explain to prospective buyers and others that the Rem-Sho was in no way connected with the Remington Standard, these instructions having been given after complainant had denied the right of the Remington-Sholes Company to use its name.

**Crean's Washington Visit.**—Crean testifies that on September 20th and October 15th, 1898, he visited the Washington office of the Rem-Sho typewriter, and that

on the occasion of his first visit he met Frank L. Sholes, who was in charge of such office. (R. 110.) He states that Sholes told him that his (Sholes') uncle, "who was the original inventor and had been the manufacturer of the Remington machine, had combined with the Remington people and that together they were making the Remington-Sholes typewriter." He says that he suggested to Mr. Sholes that he could "influence" an order through the Army Department for a Remington machine, and asked him if it would be entirely safe for him to fill the order with a Remington-Sholes machine; that Sholes said that he would not hesitate for one moment about filling the order, etc.

The testimony of Mr. F. L. Sholes (R. 1165) shows that Crean sought to entrap him. In this connection Sholes says:

> "A gentleman came into the office representing himself as Charles T. Francis of Norfolk, Va., saying that he was an instructor at the Naval Academy and that he had in his possession a requisition for a No. 6 Remington standard typewriter. He told me that he was impressed with the Rem-Sho machine, I having explained it to him a few moments before this, and asked me would I fill this requisition with a Rem-Sho machine and that if I made the bill to read Remington No. 6, I would get my money and he would get the machine and we would both be satisfied. This I most positively refused to do. I told him that if he really desired to get a Rem-Sho machine he could undoubtedly have the requisition changed to read Rem-Sho. He said that he had had a hard time in getting a requisition for a new machine and that he was afraid that if he went back to have it changed there might be some hitch. . . .
>
> "Q. 30. Did you ever tell such person that you would not hesitate for one moment about filling the order for a Remington-Sholes machine if he could obtain it?

"A. On the contrary, I refused to do any such thing, for if I had agreed to do so the machine would have been sold and delivered . . .

"Q. 33. Did you tell such person with whom you had said conversation anything regarding the history of the Rem-Sho machine or of the Remington-Sholes Co.?

"A. Yes, I did.

"Q. 34. What did you tell him in this connection?

"A. I told him Mr. Zalmon G. Sholes, the inventor of the Remington-Sholes machine, was a son of C. L. Sholes, who was the principal inventor of the old Sholes & Glidden typewriter, from which the Remington had been developed. I stated that Mr. Remington's father was of the old firm of E. Remington & Sons who originally made the typewriters and from whom they derived their name and that the two had formed a company and were now manufacturing the Rem-Sho machine at Chicago, Ill., and I might say that the gentleman looked at me as though he knew all that I was telling him."

These plain statements of Mr. Sholes, coupled with the fact, as the testimony shows, that his office was provided with the usual signs, catalogues, cards, etc., of the Remington-Sholes Company, must clearly refute the allegations of Crean's testimony as to his first Washington visit. Crean, although produced as a witness in rebuttal, offers no word of denial of these specific statements of Mr. Sholes.

On the occasion of his second Washington visit, Crean took with him Miss Danaher, an employee in the Washington office of Wyckoff, Seamans & Benedict. They testify that they found Mr. Sholes absent, but talked with M. J. L. Russell, a young man who was in the employ of Brice & Lipscomb, real estate agents, part of whose office was rented for the business of the Remington-Sholes Company. (R. 1145.) Crean testifies that Russell said that

he had charge of the sales of the Remington-Sholes machines under the supervision of Mr. Sholes; that he told Russell that he (Crean) understood "his machine was an improved Remington," and that Russell replied: "Yes, it is; it was invented by the inventors of the old Remington and is made by the people who make the old Remington; it has all the good points of the old Remington and many new ones in addition;" that Russell pointed to a Remington No. 2 machine in the opposite corner of the room and said: "That his machine was not controlled by any combination as the old Remington was and he was able to offer it at $85.00," adding: "You see this machine was invented and is being made by the same people who make the other Remingtons, but as no one controls Mr. Sholes, he is able to sell it at a lower price."

That no value should be attached to Miss Danaher's testimony is made plain from her cross-examination. When asked in what manner she had refreshed her memory she seeks to evade the truth by saying (R. 262): "I have tried to recall as best I could what was said during that conversation." When further pressed as to the manner in which she had refreshed her memory, she reluctantly admits that *on the morning of her examination she read over a memorandum which she says was "made by Mr. Crean and contained in substance what I have said."* The whole tenor of this witness' deposition shows that she was drilled to say that Russell had stated that the "Remington-Sholes was being manufactured by the same people as the Remington," but from her cross-examination it is plain that Russell did in fact make it appear that the Rem-Sho machine was a machine competing upon the market with the Remington and was in no sense the same machine. Thus she admits (R. 258) that Russell said

that the machine he showed her was "not in the Trust." And regarding the Russell conversation she further testifies (R. 260):

> "X-Q. 15. You are positive, are you, that the language he (Russell) used was to the effect that both the Remington-Sholes machine and the Remington standard machine were being made at that time by the same persons?
>
> "A. I *inferred* from what he said that the Remington-Sholes machine was made by the same people who made the Remington machine. . . .
>
> "X-Q. 20. DID THE YOUNG MAN (RUSSELL) EXPLAIN ANY ADVANTAGES OF THE REM-SHO. MACHINE OVER ANY OTHER MACHINES?
>
> "A. I THINK HE DID OVER THE REMINGTON MACHINE. . . .
>
> X-Q. 22. Do you recall whether he stated how much cheaper the Remington-Sholes machine could be bought than the Remington?
>
> "A. For $80.00 or $85.00, I do not remember for which figure.
>
> "X-Q. 23. And he stated that such price was less than that at which the Remington was being sold, did he?
>
> "A. Yes, sir. . . .
>
> "X-Q. 27. Can you not state whether the young man said that the Remington-Sholes machine was not controlled by any combination or Trust?
>
> "A. He stated the Remington-Sholes machine was not in the Trust and that was the reason that it was sold for so much less than the Remington."

The testimony of J. L. Russell, when produced as a witness on behalf of defendant, as well as the testimony of F. L. Sholes, establishes beyond question the fact that what Crean stated in respect to his second Washington visit was false and that what Miss Danaher *"inferred"* with respect to such visit was a mistake. Russell's testimony shows (R. 1145) that he was employed exclusively

by Brice & Lipscomb and had no connection whatever with the Rem-Sho office. He recalls the conversation with Crean and Miss Danaher; remembers telling them that the Rem-Sho machine was "not in the Trust as the Remington people were" (R. 1148); that he said that the Rem-Sho was manufactured by the Remington-Sholes Typewriter Company; that he never stated that such machine was being made by the people who are making the Remington machine; that he gave Crean or Miss Danaher a Rem-Sho catalogue; that he showed them the Rem-Sho typewriter and also the Remington machine which was the property of Messrs. Brice & Lipscomb, and indicated, as he says, "the many good points that the Rem-Sho typewriter had that were lacking in the Remington;" and that he further stated "that the Rem-Sho typewriter was invented by the son of the inventor of the old Remington." Russell having no connection whatever with the Remington-Sholes Company or defendant, manifestly statements made by him to Crean could be of no effect; but his testimony is pertinent as evidence of the falsity of the statements of Crean regarding his expeditions that were made for the purpose of entrapping salesmen of the Rem-Sho machine.

The Washington office for the sale of the Rem-Sho typewriter was equipped with the usual signs of the Remington-Sholes Company, the sign on the outside of the building reading "REM-SHO TYPEWRITER, MANUFACTURED BY THE REMINGTON-SHOLES COMPANY, CHICAGO, ILLS." The usual Rem-Sho catalogues, cards, etc., were also employed, these being extensively distributed by Mr. Sholes. (R. 1163.) Certainly, in the light of these facts, it is incredible that any attempt could have been made by Sholes or Russell to create the impression

of identity either as to construction or origin between the Rem-Sho machine and the Remington Standard, with which it was admittedly compared as a competitor, both in construction and price.

**Crean's Philadelphia Visit.**—The climax of this witness' chicanery was reached on the occasion of his visit to Philadelphia July 19, 1898, and the circumstances surrounding this visit must utterly condemn both the methods and the man capable of practicing them.

From Crean's cross-examination we find that on this visit he approached defendant's salesman with not only a spoken but a written lie. After his arrival at the Hotel Lafayette he first went to a printing office and caused a letter-head to be printed with the name of "BROOKS & CO., general Importers, Jamaica, W. I." ("Defendant's Exhibit Brooks & Co. Letter," R. 1477). Upon this bogus letter-sheet he wrote the following (R. 130 and 131):

> "JAMAICA, W. I., July 12, 1898.
>
> "JAS. A. HOOD, ESQ.,
>
> "Baltimore, Maryland, U. S. A.
>
> "*Dear Sir:*—Since our last advises to you on the subject of writing machines we have received the requisition of the Depart. of Justice of the Island District, authorizing us to furnish them with a writing machine. THE SPECIFICATION CALLS FOR 'ONE (1) WRITING MACHINE OF THE STYLE REMINGTON, WITH COVER OF TIN AND WOODEN BOTTOM.'
>
> "We have as yet had no advices from you in response to our last communication on the subject of writing machines and not knowing what action you may have taken will not attempt specific instructions so far as the filling of this order is concerned. If you have consummated an arrangement with the manufacturers you are at liberty to forward the ma-

chine with next shipment in usual course, well wrapped. Type like last sent.

"We shall write your further regarding other matters by later post.

"Very truly yours,

"BROOKS & Co."

"ASTOR HOUSE, N. Y., N. Y., July 28/98.

"HOWE SCALE Co.,

"Phila., Penn.

"Referring to letter 19th regarding typewriters, above letter just received. AM INCLINED TO SHIP MACHINE ON THIS ORDER IF YOU WILL BILL SO AS TO COVER LANGUAGE OF SPECIFICATION. If so, prepare machine and mail me invoice and measurements *at once* to Astor House, N. Y. Will send shipping directions accompanied by check, less cash discount within few days. BE PARTICULAR TO MAKE OUT BILL 'OF THE STYLE REMINGTON,' etc.

"Hastily,

"JAS. A. HOOD.

"Return above letter with bill."

The postscript to the above letter was written by Crean at a later date. (R. 134.) Crean testifies that after writing this letter he telephoned the office of the Howe Scale Company and requested that a typewriter salesman be sent to the hotel; that within a few minutes thereafter Mr. W. J. Romig called, presented his card, spent a few minutes with him and left to return later in the day. Crean states that when Romig returned he stated in substance (R. 112) that:

"The machine he (Romig) was offering was an improved Remington machine; that it was made by the former manufacturers of the old Remington but was being handled through the Howe Scale Co., by the Remington-Sholes Co., whose office was in Chicago. He said to me that the Remington machine

was at present not manufactured by the Remington Co., but by Wyckoff, Seamans & Benedict, and that his was really the Remington machine."

In carrying out his plot to entrap Romig, Crean introduced himself as Jas. A. Hood of Baltimore and showed Romig the bogus Brooks & Company letter, telling him that there was an opportunity to do business in Jamaica, but that the only machine known there was the Remington. He requested Romig to write him a letter embodying in substance what Romig had stated in the course of their conversation regarding the Rem-Sho machine. Later Romig returned to Crean with the letter that was introduced in evidence on behalf of complainant (R. 971), but this leter telling the truth and consequently not satisfying Crean, he *induced* Romig to add the postscript upon which great stress will doubtless be laid by counsel for complainant.

Romig's testimony with respect to his interview with Crean (*alias* Hood) is in part as follows:

"Q. 18. State fully what occurred at that conversation between yourself and the party representing himself as James A. Hood, of Baltimore.

"A. He told me that he represented an export house in Jamaica, who were in the market for a typewriter as a sample machine, and if sample were satisfactory further orders would follow. He stated that the parties for whom he was buying were familiar only with the Remington typewriter, but that he was dissatisfied with the treatmnet accorded him by the Remington Company, and wished to secure another machine to take its place, if possible a machine similar to the Remington. I expplained to him the Remington-Sholes Machine from catalogues of said machine, which I brought with me. I told him the machine was in many respects similar to the Remington and possessed many features superior to the Remington. When asked in what particular it resembled

the Remington machine and some of its characteristics, I called his attention to the universal keyboard and the shift key, stating that Remington operators would experience no difficulty in operating the Remington-Sholes machine. There were other small matters mentioned which I do not exactly recall. These were in regard to shipping, price, etc. He at that time stating that dealing with me was rather awkward from the fact that he did not know whether he was dealing with the Remington-Sholes Co. or the Howe Scale Co., I informed him that he was dealing with the Howe Scale Co., and explained to him that the machine was manufactured by the Remington-Sholes Co., and that Howe Scale Co. were the sale agents. When the matter of price was brought up, not being familiar with the export prices of the machine, I returned to the office at 508 Market street, to ascertain what prices I could quote him. After ascertaining the price, returned to Mr. Hood, giving the price of the machine for export. He promised to favor me with an order later on, stating that he was going to New York and would send me the order from there. To identify himself with an export house he showed me a letter from Messrs. Brooks & Co., Jamaica, W. I."

Romig states further that at his interview with Crean (*alias* Hood) he left with him a Rem-Sho catalogue, as he always did with parties interested in the subject of typewriters (R. 1117 and 1123), *callled his attention to the statements at the back thereof with respect to the origin of the Remington-Sholes Company and its name* (R. 1135): and told him the machine was made by the Remington-Sholes Company of Chicago. Romig stated that he had no recollection of writing "Complainant's Exhibit Romig's Seddon Letter," which was not present during his examination, nor its postscript, but as the postscript appears to be in Romig's handwriting, we have stipulated that it was written by him. While this

postscript, taken alone and without regard to the circumstances under which it was written, or the party for whom it was written, might be important, we submit that under the circumstances it cannot serve to show any purpose whatever on the part of Romig to influence Crean to believe that the Rem-Sho machine was identical with or had any connection whatever with complainant's machine. As Romig testifies (R. 1135) Crean (*alias* Hood) was "thoroughly familiar with the Remington machine," and Romig had fully explained to him, by the Rem-Sho catalogue and in conversation, the history of the Remington-Sholes Company and of the origin of its name and that its machine was a competitor of complainant's machine.

After the Romig interview, Crean went to New York and from there sent to the Howe Scale Company's Philadelphia office the bogus Brooks letter that had been shown to Romig, writing the postscript at the bottom, urging that the Rem-Sho machine should be invoiced "*of the style Remington.*" The machine was not shipped to Crean (*alias* Hood), but apparently an invoice was sent in which the machine was described as "1 Remington-Sholes Typewriter of the style Remington."

**Crean's Camden Visit.**—Crean testified that on September 16, 1898, he visited Camden, N. J., and telephoned the Howe Scale Company's office in Philadelphia to send over a typewriter salesman; that in response to his request Mr. Wilgus called; that he showed Wilgus the letter that Romig had written with its postscript; and that Wilgus made practically the same statements as Romig had made in regard to the Rem-Sho machine. Crean further testifies that he received from Wilgus a copy of the Rem-Sho catalogue, together with various newspaper

clippings and advertisements with regard to such machine, and that Wilgus gave him (Crean) a copy of the Remington-Sholes Company's nine-page letter of "Instructions to Agents," and called his attention particularly to the following parts thereof:

> "The escapement of our machine is nothing more than the escapement of the old No. 2 Remington machine. . . . The machine has now been fully explained and it remains with the salesman to add such other interesting facts, the connection of our Mr. Remington with this machine and the relation to the old Remington standard; the fact that this is the second generation of typwriter builders, and that the same standard of excellence is being maintained in the manufacture of this machine as all other goods which have been produced by the Remingtons."

Crean further testifies that later in the day Wilgus returned with a Rem-Sho typewriter which was then delivered to Crean and was paid for by him; that at the same time Wilgus delivered an invoice which designated the machine as "1 Remington-Sholes Typewriter No. 2,993, of the Style Remington."

From the testimony of Wilgus, when produced as a witness on behalf of defendant, it appears that he, too, gave Crean (*alias* Hood) a copy of the Rem-Sho catalogue, calling his attention particularly to the statements upon the last page thereof in regard to the name and origin of the Remington-Sholes Company. (R. 1339.) In regard to the invoice for the machine which Wilgus delivered to Crean, the testimony of Wilgus is as follows (R. 1339):

> "Q. 17. What, if anything, was said by Mr. James Hood, so-called, in regard to the invoicing of the Rem-Sho machine at the time this invoice was delivered to him by you?
>
> "A. Mr. Hood had an invoice of a prior date and

wanted the new one made out '1 Typewriter, style Remington,' which I refused positively to do.

'Q. 18. What reason did you give Mr. Hood for refusing to provide the invoice as he requested?

"A. I explained to Mr. Hood that it was not a Remington machine and therefore I could not bill it in that way.

"Q. 19. What reason did Mr. Hood give for wishing to have the invoice billed as '1 Remington Machine,' or '1 Remington Typewriter'?

"A. He stated that he had a requisition for a Remington typewriter and to bill it that way could avoid any question with his party, but that he wanted to use our machine in place of the Remington."

Wilgus admits writing the invoice delivered to Crean, but denies that he placed the word "Remington" in quotation marks. While Crean, when called in rebuttal, says that he did not place such quotation about the word Remington, an inspection of the original invoice will clearly show, we think, from the color of the ink, and appearance of the quotation marks, that they must have been added after the invoice was delivered to Crean, and for an obvious purpose.

Indeed, in view of the fact that the Rem-Sho machine has the universal key-board, the upper and lower case type bars, and many other features that characterized the old Remington Standard Typewriter (the patents on which have long since expired), it might not require much persuasion by so plausible an individual as Crean to induce a zealous though honest salesman to bill defendant's machine as "a Remington-Sholes typewriter of the style Remington."

**Defendant's Letter of Instructions to Salesmen.**—Wilgus denies emphatically the untruthful statements attributed to him by Crean. He admits that he gave Crean the nine-page Letter of Instructions for the

reason that he believed it would assist him in "successfully handling the Rem-Sho typewriter." (R. 1341.) An examination of this "Letter of Instructions to Agents" conclusively shows an entire absence of any intention that it should be used for the purpose of confusing the Rem-Sho with complainant's machine. The instructions are on their face designed to indicate to the salesman how he is to present the mechanical construction of the Rem-Sho to an intending purchaser, and particularly how to show its superiority over the Remington. Thus, on page 1 of the Letter of Instructions we find the words (R. 875):

> "Rem-Sho is a shift key machine same as Remington, but principal difference between the Rem-Sho and Remington, besides many improvements to be explained later, is its method of shifting for capitals. (Salesmen here illustrate by depressing cap button.) Remington machine prints capitals by shifting the carriage, a loose construction as any one can see. (If Remington machine is convenient, illustrate.) . . . As against the loose construction of the shift on the Remington carriage then, we have at all times a rigid disk whether printing capitals or small letters. . . If Remington machine is handy, call customers' attention to looseness of construction of the Remington carriage and compare it with the rigidity of the Rem-Sho. . . . On the Remington this is accomplished only by taking the bar and hanger out and riveting the hanger tighter. It requires the tools and service of an expert and costs money. On the Rem-Sho, if necessary, the operator himself can adjust any type bar. . . . On the Remington, the hanger and type bars are set up on top of the disk. . . . This is not the case in ball bearing carriages, such as the Smith Premier has. . . . This has a very easy adjustment, much easier than on the Remington machine."

Thus, reading the Letter of Instructions and having in mind the purpose for which it was designed, it becomes at

once plain that there is absolutely nothing either untrue or misleading therein. The scheme of Crean in selecting a part of this Letter of Instructions to read into the record is but another evidence of his unfairness (to express it mildly) with which the record abounds. The later letter of instructions issued by the Remington-Sholes Company and which was introduced in evidence as "Defendant's Exhibit Remington-Sholes Co. Instructions to Dealers" (R. 1453) contains practically the same matter as that in the nine-page letter of instructions before considered, and in addition thereto a "Notice" to the salesmen to let the Rem-Sho machine speak for itself, to sell the machine on its merits alone and to avoid connecting either the machine or the company with complainant.

Certainly extended argument is not necessary to satisfy this court that detective testimony, such as that of Crean (*alias* Francis, *alias* Hood) is unreliable and of little value.

*Gorham Manfg. Co.* v. *Emery-Bird-Thayer Co.*, 92 Fed. Rep., 774 (affirmed 104 Fed. Rep., 243), was a case in which complainant sought to establish infringement by having detectives mislead and entrap defendant's salesmen. The facts in such case and the views of the court with respect thereto are so pertinent that we quote at length from its opinion:

> **"A superserviceable detective is very apt to discover, in his eagerness to illustrate his fidelity to a self-imposed master, what he seeks. The persistent conduct of the complainant in sending spies upon the unsuspecting clerks of this house is calculated to excite some incredulity as to the virtue of this class of testimony.** The evidence shows that next came an agent of the complainant, representing its business in the Western territory, who also entered this store under the guise

of a purchaser, and applied to this same lady clerk for the purchase of a spoon. She distinctly told him that the spoon he bought was not of the Gorham pattern.

"Still determined to find some evidence, if possible, against the defendant company, he represented to her that he wanted the spoon to give to a friend out in Kansas who had a preference for the Gorham pattern, and persuaded her to write upon the duplicate sale ticket given him therefor the word 'Gorham.' This is verified by the fact that the duplicate sale bill which went to the defendant's accounting office did not contain the word 'Gorham,' which was written on the duplicate taken by said agent after it was returned from the accounting office to the clerk to be given to the purchaser. The clerk's evidence is that she reluctantly yielded to the agent's insistence, merely to oblige him, which act on her part, however reprehensible from a business point of view, certainly cannot be taken advantage of by the party who procured it.

"The evidence shows, without contradiction, that it *was the well-known rule of this house that no goods were to be represented by employes to customers to be other than what they were*, and that all customers buying goods of the house which proved to be dissatisfactory had the right to return them within a reasonable time and receive back the purchase money. The evidence on the part of the complainant not only fails to show that any *bona fide* purchaser had ever been decieved in the matter of purchasing something else for Gorham goods sold by this house, but, on the contrary, the evidence on behalf of the defendant shows that no such complaint had ever been made to the defendant; and, with the exception of the sale made by young Sheldon, the first intimation ever received by the agents or managing officers of defendant company of any false sale of the Gorham goods was on the filing of this suit.

. . . . . .

"Nobody was deceived or defrauded into the sales claimed to have been made to the detectives sent to

defendant's store to get evidence. They knew exactly what they were getting. The conduct of complainant's agent, who, by deceit and falsehood, induced the saleswoman to mark on the sale ticket the word 'Gorham,' shows that the scheme and purpose were to procure a wrongful act, to make it the basis of a law suit.

**"A man who procures another to slander him can not make it the basis of an action for damages.** *Sutton* v. *Smith*, 18 Mo., 120. **This is based upon the fundamental principle that no person has the right to entrap another, by false and fraudulent appearances, in order to induce an act on which to base a claim for damages in a court of justice.**

" How much more should this rule apply in a court of equity, which, in its search after justice, looks into the very heart, to divine the motive. . . ."

See also *Hostetter Co.* v. *Bauer*, 74 Fed. Rep., 235.

Manifestly, when a complainant's agent makes purchases in an ordinary manner from a salesman of a defendant, such purchases may serve to prove infringement; but where, as in this case, complainant employs a detective who by deception *induced* defendants' salesman to commit an act on which to base a charge of unfair dealing, complainant cannot avail himself of it. That the witness Crean did in fact induce defendants' salesmen Romig and Wilgus to invoice the Rem-Sho machine purchased by him as "1 Remington-Sholes typewriter of the style Remington" is made plain not merely by the testimony of these witnesses, but is conclusively proven also by the bogus Brooks & Company letter, which Crean exhibited at his first interview with Romig. This letter directed attention to the fact that "specification calls for '1 writing machine *of the style Remington,*' " etc., the very language in which Crean persuaded Romig to state the invoice.

In Sebastian on Trade-Marks, p. 140, it is said:

"However, where a defendant had, in obedience to express directions, put up his silk in imitation of the plaintiff's bundles, his execution of the order was held not to be conclusive against him (citing authorities). So, too, where a defendant packed inferior brandy in the plaintiff's cases at the express request of an agent of the plaintiff, who was seeking to entrap him, Malins, V. C., refused the injunction with costs," (citing authorities).

The record shows that both Romig and Wilgus have long since left defendant's employ. This fact is to be considered not only because it relieves their testimony from question of prejudice, but also because it shows the improbability of a repetition of any acts that they may have committed in violation of the specific instructions given by defendant and the Remington-Sholes Company to its salesmen to avoid any confusion of the "Rem-Sho" with complainant's machine.

**Scheumaker's Detective Work.**—Scheumaker was a young man employed to do detective service by Thomas F. Crean on behalf of complainant. (R. 179 and 180.) His cross-examination upon this point is as follows (R. 179):

"X-Q. 57. When Mr. Thomas F. Crean called your attention to the Rem-Sho typewriter in August, 1898, what did he state that he wished you to do?

"A. He wished me to take up the agency for it.

"X-Q. 58. Do I understand you to say that Mr. Thomas F. Crean, representing Wyckoff, Seamans & Benedict, wished you to take up the agency of Rem-Show typewriters?

"A. Yes, sir.

"X-Q. 59. You knew that he was a representative of Wyckoff, Seamans & Benedict at that time?

"A. Yes, sir.

"X-Q. 60. What reason did he give for wishing you to take the agency of the Rem-Sho typewriter?

"A. So that I might obtain information of the Remington-Sholes Company and their product which Wyckoff, Seamans & Benedict desired to obtain.

"X-Q. 61. What arrangements were made with Mr. Crean in regard to paying you for this service?

"A. The assurance that a fair compensation would be given me.

"X-Q. 62. By whom was such compensation to be given you?

"A. Wyckoff, Seamans & Benedict.

"X-Q. 63. And in pursuance with this understanding with Mr. Crean you were to obtain the agency for the Rem-Sho typewriter?

"A. Yes, sir."

In furtherance of his plan to get into the employment of the Remington-Sholes Company in order, as he admits, to disclose its affairs to complainant, but more probably to commit some act upon which complainant might hang its charge of unfair competition, Scheumaker conducted a correspondence with Page, Dennis & Company, who were then representing the Howe Scale Company and the Remington-Sholes Company at New York. A consideration of this correspondence, which is in evidence (R. 911-920 and R. 1478-1481), must show, on the one hand, the entire fairness of those representing the Rem-Sho machine, and, on the other hand, the lying methods practiced by complainant's witness in his attempt to obtain or manufacture evidence in this case. An example of the Scheumaker correspondence is found in the letter quoted upon page 182 of Complainant's Record. The answer of the Remington-Sholes Company by Mr. Seddon to that part of the letter in which Scheumaker inquires "whether I can advocate this machine as the only Remington, and that the machine known as the Remington Standard is not the Remington—that is, the original Remington." must clearly disprove any purpose to deceive Scheumaker

or to confuse the Rem-Sho with complainant's machine. This answer reads (R. 1481):

> **"Our machine is not known as the Remington Standard, or have we any connection with the Remington Standard typewriter; our machine is known as the Rem-Sho, manufactured by the Remington-Sholes Co. Regarding the history of our machine you will find it embodied in the catalogue which we send you under separate cover."**

Certainly this brief, frank statement of Mr. Seddon is a relief from the tedious screed of Scheumaker (R. 185), to which it is an answer. We submit that it is an answer also to any pretense that there was attempt upon the part of Seddon to deceive this witness. Not only did Seddon thus write Scheumaker, but the witness admits that Seddon also told him that the Remington-Sholes Company was not in the "Trust" (R. 188), gave him a copy of the Rem-Sho catalogue (R. 186), told him to explain to purchasers that Wyckoff, Seamans & Benedict sold the Remington Standard typewriter (R. 178) *and advised him to suggest to an intending purchaser to try the Smith-Premier and the Remington side by side with a Rem-Sho.* (R. 178.)

In the light of this correspondence and of the admissions of this detective witness we scarcely think that the court will predicate upon his testimony any charge that defendant has been guilty of unfair dealing.

**A. J. Scorer's Alleged Misrepresentations.**—This witness, who is now in the employ of the United Typewriter and Supplies Company in selling the "Trust" machines, was produced to show that during his few months of service (from December, 1897, to July, 1898) as salesmen for defendant he misrepresented the Rem-

Sho machine and to show also that parties purchased from him such machines under the impression that they were of complainant's manufacture.

We have already shown the error of that part of Scorer's testimony alleging that various parties purchased Rem-Sho machines under the belief that they were complainant's. We submit that the testimony of this witness clearly proves that he understood fully that the Rem-Sho was a competitor of complainant's machine, and that notwithstanding his attempts to show that he was guilty of misrepresentation he did not in fact confuse the Rem-Sho with complainant's machine nor cause others to do so. The testimony of defendant's witnesses who purchased machines from Scorer leaves no shadow of doubt that both he and they fully understood that the Rem-Sho was a competing machine and had no connection whatever with complainant.

When Scorer went into the employ of the Howe Scale Company, of Pittsburg, there were Rem-Sho catalogues in that office accessible to the salesmen and for their use in enlisting the interest of prospective purchasers. (R. 1234.) Scorer at the outset of his Pittsburg service used a business card containing a picture of the Rem-Sho typewriter, his own name printed across it and the words "Representing the Rem-Sho Typewriter, Howe Scale Co., 107 Market St., Tel. Pittsburg 494" appeared thereon. (R. 1232 and R. 1463 and R. 358). At a later period of his service he used the ordinary card of the Remington-Sholes Company ("Defendant's Exhibit Remington-Sholes Company Pittsburg Card") (R. 1469 and R. 357) that contained the Chicago address and the Pittsburg address of such company.

He had been a typewriter salesman for several years

before he entered defendant's employ, he was familiar with complainant's machine, its wide reputation, and must have known that close competition existed between the various makes of typewriters. He knew that the Rem-Sho was manufactured in Chicago (R. 362, Q. 117), that it was competing with complainant's machine and that of other standard makes. He knew the Pittsburg agent of complainant and its office (R. 361) and that the Rem-Sho was not manufactured by complainant (R. 362.) His pretension that he did not know that the Rem-Sho was made by the Remington-Sholes Company of Chicago is incredible upon its face in view of all the facts appearing from his testimony and from the testimony of defendant's witnesses Beitel, Evans and Alkire and from the fact that the name "REMINGTON-SHOLES COMPANY, MFRS., CHICAGO" appeared on every machine. He admits that he explained to purchasers that the two machines were in competition (R. 363), and that the relative superiority of the two machines was discussed when offering the Rem-Sho. (R. 368.)

In the light of Scorer's own admissions and of the testimony of the witnesses produced on behalf of defendant it is perfectly plain not only that he must have been fully aware of the origin and history of the Rem-Sho machine, but also that in his dealings with customers he represented it as a competing machine and not as one having any connection whatever with complainant.

## Alleged Confusion in Trade.

A great many witnesses have been produced on behalf of complainant for the purpose of showing that the public has confused the Rem-Sho typewriter with complainant's machine or has in some way supposed that the Rem-Sho

was a product of complainant's factory. These witnesses with few exceptions, are employes either of complainant or other companies associated with it in the so-called typewriter "Trust." We confidently submit, not only that their testimony fails to establish any uncertainty in the public mind as to the identity or origin of the Rem-Sho machine, but the very multitude of witnesses from all parts of the country and the absence of any proof of confusion should conclusively prove that no such confusion in fact exists.

JOSEPH E. PLATT, when called as a witness on behalf of complainant, testified (R. 144) that while he was agent for the Rem-Sho he found at his office in New Haven that the prevalent opinion of his patrons and the public generally was that the Rem-Sho was manufactured and put upon the market by Wyckoff, Seamans & Benedict, and he attributed the existence of such opinion (R. 145) to the use of the name Remington in connection with defendant's machine. That Platt's testimony can have no force whatever is clearly shown from his own deposition and from that of complainant's witness Downs. (R. 247.) Platt for many years had been the New Haven agent of Wyckoff, Seamans & Benedict in the sale of the Remington typewriter, and during the latter part of such time had occupied the office at No. 27 Centre street. (R. 1374.) He gave up the agency of the Remington machine and immediately became the local dealer for the Rem-Sho machine. (R. 142.) It was not unreasonable, therefore, that many of his patrons and of the local public, familiar with the fact that he had long represented complainant, should assume that the new machine that he was offering for sale at the same store might have some connection with complainant. This was the reason, as Complainant's Record shows (R. 248), why Mr.

Downs, not knowing that Platt had passed from the service of complainant to defendant, supposed that he would procure from Platt a Remington machine, when he gave Platt an order for *"a typewriter,"* without other designation.

Platt's deposition shows that he kept on hand a supply of Rem-Sho catalogues, folders, etc., and gave all information necessary to enlighten any one as to the origin of the Rem-Sho machine and as to the fact that it had no connection whatever with complainant's. (R. 145 and 147.) It will not be pretended that Platt ever made an untruthful representation with respect to the origin of the "Rem-Sho," but, on the contrary, his testimony shows that he freely circulated catalogues, advertisements, etc., fully advising the public with regard to such machine.

MISS ELIZABETH WILSON, when called as a witness for complainant, testified (R. 265) that she remembered reading a letter received at the office of the U. S. District Attorney for the District of Columbia (at which office she was employed as stenographer), and that such letter referred to the "Rem-Sholes" typewriter. When asked what impression was made upon her mind as to the origin of the machine referred to in said letter she answered (in language strikingly suggestive of the detective witness Crean) that she *inferred* that the machine was being put out by the firm which *had* manufactured the Remington machines, "and that the name Sholes was the name of the man who had made some very important improvements, and therefore his name had been used in connection with the old Remington typewriter; and naturally that the Remington-Sholes, *better known as the Rem-Sho*, was an improved Remington typewriter."

It appears from the cross-examination of this witness (R. 266), and also from the deposition of Mr. Frank L. Sholes (R. 1171), that the letter to which the witness referred read as follows:

> "*Dear Sir*:—We received the award for furnishing typewriters for the Department of Justice for the coming year. We take pleasure in sending you under separate cover a catalogue. Should you be in need of anything in this line, we will be pleased to receive your order through the Department of Justice.
>
> "Yours very truly,
>
> "REMINGTON-SHOLES COMPANY,
>
> "F. L. SHOLES, Manager."

It also appears that this letter was written upon the usual letter-head of the Remington-Sholes Company (R. 1170), whereon appeared in large letters the name "REM-SHO," the name of the company, the names of its officers, the Chicago factory address, the Washington address and a picture of the machine. Certainly there was nothing in this letter to warrant the "inference" of Miss Wilson, and if she read the catalogue which accompanied the letter it must have set at rest any question that such inference may have raised in her mind.

A. ROGERS LEE, when called as a witness for complainant, produced a letter addressed to complainant because, as he stated, he thought that complainant was the proprietor of the Rem-Sho machine, which his employer was at that time using. It appears from the testimony of this witness, however, that he had nothing whatever to do with the purchase of the machine, never used it (R. 388), *never examined it to ascertain by whom it was made*, but that he knew that it was a Rem-Sho. He admits that he *does not know why he assumed that Wyckoff, Seamans & Benedict manufactured the Rem-Sho.*

(R. 388.) Except for the fact that Lee's employer had before owned a Remington Standard, there is no more reason why Lee should have addressed a letter relating to repairs for a Rem-Sho to Wyckoff, Seamans & Benedict than to any other typewriter concern. The testimony of the witness is suggestive, however, as showing the exhaustiveness with which complainant has gathered together every scrap of testimony that might have even the remotest bearing upon the case.

F. LYMAN BROWN, a dealer in typewriters in New York City, in answer to leading questions of counsel for complainant, states (R. 448) that he has heard defendant's machine "called the Remington, and by some the improved Remington." He does not attempt to state, however, *when* he heard defendant's machine so called, nor *by whom*—whether by complainant's employees or detectives or others. This witness also states that the Rem-Sho machine could be sold as and for the Remington machine to parties not knowing the difference between the machines (R. 449), but this is readily explained by his testimony (R. 448), "I have customers very frequently who purchase machines from me *and buy whatever I tell them is a Remington,* they not knowing the difference between the machines." The bias of this witness is plainly manifest in his volunteer answer to direct question 31 (R. 449), and is due doubtless to the fact that he failed to effect a connection with the Remington-Sholes Typewriter Company at the time negotiations to that end were pending. On cross-examination he admits (R. 452) that he never sold a Remington-Sholes typewriter, and further admits that he cannot give the name of any one who ever bought such typewriter supposing it to be a Remington Standard machine.

In view of the fact that this witness has had no experience whatever with the sale of the Rem-Sho machine his statement that others might be confused or misled is without foundation and can amount to nothing. In the case of *Cook* v. *Starkweather,* 13 Ab. Pr. (N. S.), 392, the court, in commenting upon the worthlessness of expert testimony in trade-mark cases, said:

> "An expert may easily detect a counterfeit bank bill, but his opinion as to whether the public could detect it is not entitled to any more weight than the opinion of any other person."

In *California Fig Syrup Co.* v. *Taylor Drug Co.,* 14 R. P. C., 564 (High Court of Appeals), in speaking with regard to the trade witnesses who testified that defendant's goods could be readily passed off for complainant's, Rigby, L. J., said:

> "As regards the actual facts, when we come to the proof of them we have got certain gentlemen who are ready to say in their opinion—it never occurred to them that they never had any experience —that, if they were asked to supply 'American Syrup of Figs' they would supply 'California.' I think that is a rather strong thing to say if that were all, but it is a pity for the plaintiffs that they did not go to one of these gentlemen and by experiment find out what would be done."

A. PALMER BROOKS, a sales agent for complainant, after giving incompetent testimony (R. 240) with respect to an Army bid which he never saw (R. 243), states (R. 242) that on several occasions he was told by people that they had purchased a Remington machine at better figures than he could give and that on inquiry he found that such persons did not refer to complainant's machine, but to the Rem-Sho, and he mentions specifically a statement made by some person at the War Depart-

ment to the effect that they had received some Remington machines which witness found on examination to be Rem-Sho machines. The manifestly incompetent testimony of this witness was objected to and it is believed that this objection will be sustained.

The cross-examination of this witness shows that he never even attempted to see the original bid at the War Department (R. 243); that he is unable to give the names of the persons who, as he states, "having bought Rem-Sho machines told him that they could purchase Remington machines at a better price;" and although he admits that he could find at least one of such persons, no attempt whatever was made to produce such person as a witness. Such testimony as this, so easily manufactured, so incompetent and so incapable of rebuttal, can certainly have no weight.

S. W. CRANDALL, manager of complainant's Chicago office (R. 288), when asked (R. 289):

> "13 Q. What inquiry, if any, has been made of you or come to your knowledge concerning the origin of the Remington-Sholes typewriter, or Rem-Sho typewriter, and as to the connection, if any, of Wyckoff, Seamans & Benedict therewith?" answered:
>
> "A. Many inquiries, not always the same, of a general character have been made. **I do not recall specific cases."**

The witness goes on to state the nature of these general and indefinite inquiries and draws from them the conclusion that "the impression in the mind of the inquirer was beyond any question whatever an impression that the machine which was the subject of the inquiry possesses merit of manufacture in some degree of the same character as the Remington typewriter." (R. 290.) While the witness attempts, under repeated

urging of counsel for complainant (R. 303), to recall in a general and indefinite way instances of confusion, he admits upon cross-examination that he cannot give the names of any persons who were confused (R. 308), and he adds: "I simply retain it as a *recollection of a condition.*" He further admits (R. 308) that the instances referred to by him *"occurred the greater part three or four years ago,"* and that **"no case has arisen of any moment in the last two years."**

He admits also that in the cases mentioned in which the alleged inquirers had received business cards of the Remington-Sholes Company such cards contained the name "REM-SHO," the names of Mr. Fay and Mr. Remington, and the factory address of the Remington-Sholes Company in Chicago. His cross-examination shows that wherever this witness has attempted to cite any instance of confusion he is unable to locate it in such manner that the parties could be identified for the purposes of rebuttal. Thus he explains his inability to give the name of the party mentioned in one of the instances cited by him because, as he says, it occurred "at least a year and a half ago." (R. 309.) The following question and answer must show the indefinite character of the witness' statements and the worthlessness of his testimony as proof of any confusion existing in the pubilc mind between complainant's machine and that of the Remington-Sholes Company (R. 310):

> "87 X-Q. In your answer to direct question 14, when testifying in regard to the character of the inquirer's name concerning the origin of the so-called 'Rem-Sho' typewriter, you state that 'there was without exception in the case of such inquiries referred to a confusion on the part of the inquirer as to the manufacture, and in some instances even of the sale of the so-called 'Remington-Sholes' or

'Rem-Sho' as distinct from the 'Remington typewriter.' Now, I ask you to give me all the facts, names of persons, dates, etc., of a single instance within your own experience in which the use of the name 'Rem-Sho' in connection with defendant's machine has been the cause of any confusion as to the source or origin of said machine? In answering this question you will please give me all data within your recollection that will enable me to identify the parties concerned.

"A. **In view of the fact that no case has come under my personal observation for a year and a half; in view of the fact that these cases as a whole transpired three and four years ago,** that no memorandum of persons, dates or the events was made, that no reference to any memorandum or statement or correspondence has been made, or any thought give to the subject whatever, *I do not retain in my recollection the names of any parties, any dates or other data bearing upon this question;* but in making the answer I did as to the confusion of the public on the subject of manufacture of the so-called 'Rem-Sho' machine, I had in mind what was a common report, common rumor and talk between different members of my organization and myself, ourselves and our customers."

The unreliability of the witness' testimony is also evident from the fact that the name Rem-Sho had been adopted only two years prior to the time when his deposition was given. If the testimony of this witness can prove anything it is that the alleged confusion or the inquiries concerning which the witness speaks have ceased since the adoption of the name "Rem-Sho" as a trademark for the machines of the Remington-Sholes Company. In view of Mr. Crandall's indefatigable efforts in supplying complainant with material to be used in evidence and of his repeated appearances upon the witness stand for complainant it is fair to assume that the barren-

ness of fact and profuseness of opinion that characterize his deposition may be construed in defendant's favor.

JOHN S. BAYES, another salesman for complainant, was called to prove that there was an impression in the public mind that the Rem-Sho typewriter was in some way connected with complainant, but the following question and answer, which avoided the necessity of any cross-examination, shows that the testimony of the witness simply makes for defendant, viz. (R. 280):

> "11 Q. Do you now recall the instances when any inquiry was made as to Wyckoff, Seamans & Benedict's connection with the so-called Rem-Sho typewriting machine?
>
> "The same objection as to the last question.
>
> **"A. I don't recall any specific case. Say three or four years ago it was quite general."**

If the testimony of this witness proves anything it is that since the adoption of the name "Rem-Sho" the inquiries referred to have ceased.

A. D. BROWN, manager of complainant's St. Paul office (R. 282), was produced for the purpose of showing that in the Northwest confusion existed in the public mind as to the origin of the Rem-Sho machine. The only specific instance that Mr. Brown is able to give (R. 285) is stated in his answer to Q. 22, which reads as follows:

> "A. About four months ago a gentleman by the name of Pierce, living at Rochester, Minnesota, called at our office in St. Paul and he had with him a card that was either sent or left with him by the Rem-Sho people, and the card was printed Remington-Sholes. He came in our office at St. Paul, thinking it was a branch of their office in Minneapolis *I suppose* as *that was the address on the card*, and wanted to see the machine. We of course were unable to show him the Rem-Sho, BUT DID SHOW HIM THE REMINGTON."

On cross-examination it appeared that the card which Mr. Pierce produced was the usual card of the Remington-Sholes Company containing its Chicago factory address, the names of its various officers, the address of the branch office in St. Paul, the picture of the machine, the name "REM-SHO," etc. (R. 286.) This witness, like the other employees of complainant produced for the purpose of showing confusion in the public mind as to the origin of the Rem-Sho machine, **admits that he can not name any particular instances.** (R. 287.)

E. A. CONYNE, a salesman for complainant (R. 312), attempts to cite two instances (R. 312) of confusion as to the origin of the Rem-Sho machine. The witness is unable, however, to identify the parties referred to in any adequate manner, nor is attempt made to produce them. Certainly his testimony as to the "impressions" of these parties is without force.

D McKAY, another salesman of complainant (R. 316), also claims to have found confusion in the mind of the public as to the origin of the Rem-Sho machine (R. 317), but when asked to state any facts tending to show such confusion he states:

> "In the course of my experience selling Remington typewriters, I can remember of some instances where that has been the case. **I cannot give the data nor can I state where this has occurred, as I do not remember it now."**

When pressed to give an instance of confusion he mentions the case of Mrs. Sternberg, who, as he alleges, informed him *some four years before* (R. 319) that she had sent her machine to the Remington-Sholes office for repairs while under the impression that it was the office of the Remington typewriter. This witness attempts to

explain his inability to recall specific instances of confusion as follows (R. 318):

> "When the Remington-Sholes machine was first put on the market it was known as the 'Remington-Sholes,' hyphenated name, *and during the time that it continued under that name* there was constantly more or less misunderstanding with the buyers of typewriting machines whether this machine was manufactured by the Remington Co., or not."

On cross-examination the following question and answer occurs:

> "20 X-Q. I ask you to state a single instance within the past two years in which, within your own knowledge, any such confusion has occurred, and I ask you to give me sufficient data with respect thereto as will enable me to verify such statement?
> **"A. I can't remember any specific instance where that has occurred at present."**

W. J. McNALLY, a manager of complainant company (R. 320), after stating as his *own conclusion* that there has been confusion in the public mind as to the origin of the Rem-Sho typewriter, was asked to recall facts or circumstances tending to prove such confusion, and to this question he answered:

> "A. *I don't recall any particular case. The matter has gone out of my mind because I didn't pay any particular attention to matters of this kind that would come up.* I have frequently been asked by purchasers if the companies were not the same or if the Remington typewriter did not manufacture this machine and sell it under *another name.* In fact I have had quite a number of cases where confusion arose on account of the similarity of the name 'Remington' **but I don't recall any particular case."**

When pressed on cross-examination for data about the

alleged instances of confusion the witness is unable to give any, since, as he states:

> "I didn't make any mental or other note at the time. In fact I didn't pay any particular attention to it other than meeting it in the regular course of business." (R. 327.)

GEORGE E. FIELD, the Indianapolis manager of complainant (R. 336), testified that the Rem-Sho typewriter had been on sale in Indianapolis for about a year and a half, its office being at 122 E. Market street. (R. 339 and 340.) He alleges that, aside from the matter of mistakes in telephone calls (which will be considered in a subsequent part of this brief), there have been instances of persons calling at complainant's office with goods intended for the office of the Rem-Sho typewriter. (R. 341.) No attempt whatever was made to produce any person who had confused the Indianapolis office of complainant with that of the Remington-Sholes Company, nor were any names or addresses given by the witness, nor in fact any data that would enable the court to discover whether there was in fact any *bona fide* confusion or even instances of confusion due to accident or carelessness.

The testimony of this witness does show, however, that the Indianapolis office used in its business the ordinary card of the Remington-Sholes Company (R. 343), giving the name of the machine "REM-SHO," a picture of the machine, the Chicago factory address, the names of the officers, the Indianapolis office address, etc.; and the testimony of this witness also shows that complinant's Indianapolis business address is given in the city directory under the name "Remington Standard typewriters —Wyckoff, Seamans & Benedict, 12 E. Market," while the business of the Remington-Sholes Company appears

under the name "Remington-Sholes Company, the Rem-Sho typewriter, 122 E. Market."

JOHN LUPTON, another of complainant's clerks (R. 481), was produced to identify a freight bill directed to "Rem. Typewriter Co., 127 Rees Str." He states that he sent to the freight office for the packages referred to in said bill and found that they were addressed "Rem-Sho Typewriter Co., 127 Rees St.;" that thereafter he telephoned the Remington-Sholes Company and the packages were taken away.

We submit that no proof of confusion is made by this freight bill or by the testimony of the witness with respect to it.

J. S. BAYES, an employee of complainant, was recalled and W. A. SMITH was produced to prove that on November 17, 1899 (a few days before their depositions were taken), Bayes received a Remington machine that had been previously tendered at the office of the Remington-Sholes Company, and that Smith, while acting as billing clerk for the W. B. Gibson Company, of Chicago, had delivered to an expressman said machine with its stand and cover (the latter bearing the name "Remington"), and had entered upon the delivery book of the Gibson Company the direction: "Remington-Sholes Co., No. Madison St. Chicago, bet. Clark and Dearborn."

Smith does not attempt to explain why he made this entry on the delivery book—a significant fact, as it appears that the expressman at the time he received it was given a letter addressed to Wyckoff, Seamans & Benedict. (R. 481.) Nor does Smith say that he thought the Remington-Sholes Company and complainant were either the same or in any manner associated. He had heard the name Remington-Sholes Company before (R. 478), but, as he admits that he did not know at the time

he made the entry (R. 478) either the office or factory address of the Remington-Sholes Company, while he did know complainant's address (R. 477), it is obvious that he did not intend to send the machine to the Remington-Sholes Company. Certainly no confusion can be predicated upon Smith's carelessness when he nowhere alleges that any such confusion existed.

W. A. CATLIN, the Kansas City manager of complainant, produced a copy of the "Kansas City Star" for October 19, 1900. (R. 530 and 532.) In this copy of the "Star" appears an advertisement for "3 stenographers," the advertisement ending "Apply Rem-Sho Typewriter office, 25 E. 9th St." Catlin alleges that on the morning after the advertisement appeared several stenographers called. It is not pretended, however, that any one of these callers identified *this particular advertisement in the "Star," or its date,* and although counsel for complainant asked witness the direct and leading question (R. 531):

> "15 Q. These callers referred to this particular advertisement which you have identified?"

The witness answered:

> "They said 'you have an advertisement in the Star.'"

The fact that all the parties who answered the advertisement were stenographers raises the presumption that they were familiar with various makes of typewriting machines.

The fact that all these callers came on the same day, and that there was never any like instance, either before or after, might fairly raise a suspicion that some of complainant's superserviceable detective-employees, like Crean, had been at work.

The witness admitted on cross-examination that the Kansas City office of Wyckoff, Seamans & Benedict advertised *exclusively in the "Kansas City Star"* (R. 539), but no attempt was made to show by the alleged callers whether they came in response to the particular advertisement referred to or in response to some other advertisement that may have been inserted in the "Star" on other dates by complainant's Kansas City office.

The testimony of this witness was manifestly not proper rebuttal in any sense and was objected to for such reason. It should be stricken out; but whether considered or not, it certainly cannot establish any confusion in the public mind. It appears from the testimony of the witness that for more than a year and a half there had been an office for the sale of the Rem-Sho machine in Kansas City. Certainly within such time there was ample opportunity to discover *real instances* of confusion had such existed. The testimony of the witness is pertinent, however, as showing the practice of complainant's agents throughout the country to report to the New York office of Wyckoff, Seamans & Benedict everything that could have bearing upon this case. (R. 538.)

W. C. GOODHUE, an independent dealer in typewriters for the past five years (R. 565), says that he *has had inquiries as to the relation of the Remington-Sholes Company and complainant*, but he is unable (R. 565) to give the names of persons by whom such inquiries have been made, and when asked the substance of such inquiries says:

> "That is a hard question to answer. The talk along that line *has been so indefinite that I could not give anything intelligible on that line.* I can tell you this: I have had people in ordering machines, or in making inquiries in regard to machines, desig-

nate the Remington Standard as being the machine they wanted, not the Remington-Sholes."

The testimony of this witness clearly makes for defendant.

This court must be impressed with the utter worthlessness of the greater part of all this testimony with respect to alleged trade confusion. Is it reasonable to suppose that any appreciable (not to say injurious) confusion actually exists between complainant and defendant's principal when complainant fails to produce unequivocal testimony to that effect? Is it fair to accept as evidence the *mental impressions* of complainant's salesmen as to instances of confusion when they admittedly cannot recall specific cases? Or is it probable that complainant's salesmen throughout the country, under instructions to "report matters of interest in this case" to complainant would have allowed any *bona fide* case of confusion to escape? During the years through which this case has been pending complainant has ransacked this country from Canada to the Gulf in its efforts to find persons who have acted in mistake or confusion. And as a result they bring forth a mass of hearsay testimony and *mental impression* testimony of their salesmen and others and ask this court to base a finding of fraud thereon.

## Alleged Confusion in Mail.

A casual inspection of Vol. 2 of the Record (complainant's proofs, rebuttal and exhibits) might convey the impression that there had been serious confusion in the mail matter of complainant and of the Remington-Sholes Company. This mail matter has been so arranged in the volume of exhibits and so interspersed with irrelevant

and incompetent foreign advertisements, etc., many of which have not been properly proven, as to tend to create a confusion in the mind of the court that cannot exist if a careful consideration of the record be had.

In various instances also, exhibits have been improperly designated in Vol. 2 of the Record. Thus, for example, on page 860 of Vol. 2 appears a series of nine letters, there designated as "Complainant's Exhibit Rem-Sho Indianapolis Envelopes." This might readily lead the court to believe that these envelopes were all instances of letters delivered to the office of the Remington-Sholes Company by mistake. As a matter of fact, there was but ONE, "Complainant's Exhibit Rem-Sho Indianapolis Envelope" (see deposition of Field, R. 339), which is the one designated as No. 9 on page 861, Vol. 2, and which Mr. Field says was the *only* letter delivered by mistake to the Indianapolis office of the Remington-Sholes Company. (R. 339.) The remaining exhibits, 1 to 8, are designated in the Record (R. 338) "Complainant's Exhibit Remington Typewriter Indianapolis Envelopes Nos. 1-8, Inclusive." Under the same heading, "Exhibits Showing Confusion in Business," is listed (R. 867) as "Complainant's Exhibit Rem-Sho Indianapolis Business Card," one of *defendant's* exhibits (R 43), and in R. 859, under the same heading is listed another of defendant's exhibits, "Wyckoff, Seamans & Benedict Card Chicago Office," introduced in R. 469. These are mentioned merely as instances to show the necessity of a careful scrutiny of the record by the court in order that a false impression may not exist.

From the number of letters appearing in the volume of exhibits the court might also be led to suppose that there had been *many* instances during the past four years in which letters had been delivered to various offices of the

Remington-Sholes Company throughout the United States which letters were intended for the offices of complainant. As a matter of fact, these instances are so few as to be insignificant. Thus, for example, in R. 941-945, appear *six* letters, only *one* of which was delivered to the office of the Remington-Sholes Company, and that one by mistake of the letter-carrier, the letter being distinctly addressed "Remington Typewriter Co., Chicago, Illinois." (R. 295.)

**Mail at Chicago Office.**—The record shows that since the fall of 1897 only twelve letters intended for complainant have been delivered to the Chicago office of the Remington-Sholes Company, these letters being designated as follows, viz.: (1) "Keokuk Envelope" (R. 939, introduced R. 300), postmarked November 6, 1897, and addressed "Remington Typewriter Co., Chicago, Illinois;" (2) "Noble Letter" (R. 871, introduced R. 470), dated September 26, 1899, addressed "Remington Typewriter Co., Chicago, Ill.;" (3) "Springer Letter and Envelope" (R. 932, introduced R. 471), dated August 24, 1899, addressed "Remington Typewriter Co., 48 Lake St., City;" (4) "Dillingham Remington-Sholes Letters and Envelope" (R. 933, introduced R. 295-298), dated August 24, 1898, and addressed "Remington Typewriter Co., Chicago, Ill.;" (5) "Ginn & Company Letter and Envelope" (R. 936, introduced R. 472), dated August 21, 1899, addressed "Remington Typewriter Co., City;" (6) "Mumaw Letter and Envelope" (R. 938, introduced R. 487), dated October 31, 1899, addressed "Remington Typewriter Co., Chicago, Ill.;" (7) "Hansen Letter" (R. 941, introduced R. 295), dated November 15, 1898, addressed "Remington Typewriter Co., Chicago, Ill.;" (8) "Potter Letter and Envelope" (R.

947, introduced R. 295-297), dated October 18, 1898, addressed "Remington Type W. Co., Chicago;" (9) "Commonwealth Iron Co. Envelope" (R. 952, introduced R. 295-299), addressed "Remington Type Writer Agency, Chicago, Ill.;" (10) "Ton Postal Card" (R. 953, introduced R. 479), postmarked November 19, 1899, addressed "Remington Typewriter Co., R 460—53 Dearborn St., Chicago;" (11) "Macomb Shorthand School Letter and Envelope" (R. 989-990, introduced R. 543), dated November 6, 1900, addressed "Remington Type-writer Co., Chicago, Ill.;" (12) "Mumaw Exhibits 1-7" (improperly designated "Mumaw Letter and Envelope," and only three of the seven are reproduced) (R. 991-993, introduced R. 23), envelope postmarked January 30, 1890, and addressed "Remington Typewriter Co., Chicago, Ill."

The following question and answer from the deposition of Crandall, manager of complainant's Chicago office, shows the extent of the alleged confusion in mail at such point (R. 307):

> "75 X-Q. In your answer to direct question 54 you have stated that you know many instances where letters which were intended for Wyckoff, Seamans & Benedict were delivered by mistake or inadvertence to the Remington-Sholes Company. Can you state approximately how many such instances there were, and how long it has been your habit to preserve the envelopes in which such letters were received?
>
> "A. There may have been, probably were, upwards of a *dozen such cases in the last four years. We have attempeted to save the envelopes only in the last two years.*"

In his rebuttal deposition Crandall states (R. 546, 547) that complainant's Chicago office is the largest of complainant's offices in the United States, except that at New

York; that the daily mail ranges from twenty-five to 100 letters, a large part of which is addressed to complainant as the "Remington Typewriter Co." Certainly, the surprise must be that out of the many thousands of letters improperly addressed to complainant within the past four years as the "Remington Typewriter Co." such a small number should have gone astray.

**Not one of these twelve letters, which by mistake were delivered to the Remington-Sholes Company's office, shows any indication whatever of confusion in the mind of the writer between the complainant and the Remington-Sholes Company.** On the contrary, these letters are mainly from business colleges, shorthand schools and others who certainly were familiar with the Remington Standard machine and its Chicago office. The delivery of the letters to the office of the Remington-Sholes Company was obviously a mistake of the postoffice, a fact apparent from a consideration of the exhibits. Thus, in "Complainant's Exhibit Hansen Letter No. 2" (R. 942), the writer says: "I sent you M. O. for $10.00 on the 15th inst., that the Post Office in Chicago delivered to the Remington-Sholes Co. *by mistake.*" And again, in "Complainant's Exhibit Hanson Letter No. 3," the writer says in this same connection: *"I was surprised as the address on the envelope and in the letter in no way resemble the name of the Rem-Sho firm;"* and in "Complainant's Exhibit Hansen Letter No. 4" the writer says: "I enclose the letter asked for by you, delivered through *mistake of the Post Office* to Sholes Co."

The testimony of complainant's witness Crandall with respect to these letters clearly shows that he also recognized the fact that their delivery to the Remington-Sholes Company was simply by mistake of the letter-carriers, as

he testified (R. 302) that complainant had placed the matter "In the hands of the Postmaster at Chicago *in order that the letter-carriers might be called to account.*"

**Mail at Philadelphia Office.**—Mr. Sobey, the manager of complainant's Philadelphia office, states (R. 499) that the complainant's Philadelphia office is next to Chicago the largest of complainant's offices. He further states that, although the Rem-Sho typewriter has been on sale in Philadelphia about three years (R. 495), and the Remington-Sholes Company has been selling its own machines at such point about a year (R. 502), there have been but TWO INSTANCES of alleged confusion in mail at such point. (R. 500.) One of these was "Complainant's Exhibit Metropolitan Life Insurance Co." (R. 956, introduced R. 497). The envelope of this letter was incorrectly addressed, as witness states (R. 496-499), "Remington & Co., 11th & Chestnut Sts.," the Philadelphia office of complainant being near the corner of 9th and Chestnut. There is nothing in the letter whatever to indicate any confusion in the mind of the writer. The mistake in the delivery of the letter was plainly a mistake of the letter-carrier and was due doubtless to the improper address. The other instance mentioned by witness was a package addressed to the Remington-Sholes Company, and this the postman inadvertently left at complainant's office. Certainly there was no confusion in the mind of the sender of this package, as it was sent from the London office of the Rem-Sho machine. (R. 496.)

In its rebuttal, complainant introduced "Complainant's Exhibit Chester News Letter and Envelope" (R. 996, introduced R. 648); this letter is dated March 15, 1900, and is addressed "Remington Machine Co., 10th & Chestnut Sts., Philadelphia." There is nothing in this

letter to indicate any confusion in the mind of the writer, and the fact that it was incorrectly addressed to the building in which was the office of the Remington-Sholes Company will readily account for the mistake of the postman in delivering it at such office.

**Mail at Indianapolis Office.**—George E. Field, the manager of complainant's Indianapolis office, testified that the mail at his office averages about fifteen to twenty-five letters per day. (R. 342.) He produced but a single instance in which a letter intended for complainant was delivered by mistake to the Indianapolis office of the Remington-Sholes Company and admitted (R. 339) that he did not recall any other instances of such kind, although the Rem-Sho typewriter was sold in Indianapolis by the Remington-Sholes Company and had been on sale in such market for about a year and a half. (R. 339.) The letter referred to by the witness is "Complainant's Exhibit Rem-Sho Indianapolis Envelope, March 15, 1899," and is the last letter appearing on R. 861) (introduced R. 339). The envelope is addressed "The Remington Typewriter Co., 12 Market St., Indianapolis." Plainly, this shows merely a mistake of the letter-carrier, as the envelope correctly gives the street number of complainant's Indianapolis office.

## Miscellaneous Exhibit Letters and Envelopes.

It is plain from the number and variety of the letters introduced that complainant hopes that their quantity may cure their impertinence.

"Complainant's Exhibit Remington Draft and Envelope" (R. 859); "Complainant's Exhibit Remington

Typewriter Indianapolis Envelopes" (R. 860); "Complainant's Exhibit Remington-Sholes Company Envelope August 25, 1899" (R. 937); "Complainant's Exhibit Remington-Sholes Company Envelope October 21, 1898" (R. 954); "Complainant's Exhibit St. Paul Envelope Exhibits" (R. 871), merely support an allegation that is not denied, viz., that complainant's office is frequently addressed as the "Remington Typewriter Co."

"Complainant's Exhibit Leffingwell Letter and Envelope" (R. 950, introduced R. 658), dated December 5, 1899; the letter is addressed "Remington-Sholes Typewriter Co., Chicago, Ill.," and the envelope is addressed "Remington Typewriter Co., Chicago, Ill." This is the letter referred to in "Complainant's Exhibit Crandall Letter" (R. 949), in which Crandall, in writing to the Remington-Sholes Company, says: "We trust you will overlook the fact that by mis-direction of the envelope we were led to break the seal." It will be noted that not only did they "break the seal," but also had a photographic copy made of the letter and envelope for the purposes of this case.

In R. 948 appears "Complainant's Exhibit Remington Letter July 7, 1899 (introduced R. 460)), and in R. 868 appears "Complainant's Exhibit Wyckoff, Seamans & Benedict Letter July 8, 1899" (introduced R. 460). These letters, although introduced at the same time, are widely separated in the volume of Exhibits by various incompetent domestic and foreign advertisements. They prove nothing except that a letter was addressed to "Mr. Franklin Remington, care Remington Typewriter Company;" that the Chicago office of Wyckoff, Seamans & Benedict opened such letter and forwarded it to Mr. Remington, who promptly replied, thanking complainant

for transmitting the same, whereupon complainant's Chicago office sent Mr. Remington's letter to its New York office with the following statement: "We do not know whether this instance is of any value to Mr. Donnelly or not, the envelope, bear in mind, was adressed in care of Remington Typewriter Co."

"Complainant's Exhibit Mett Letter and Envelope" (R. 869, introduced R. 493) are addressed to "Wyckoff, Seamans & Benedict, 327 Broadway, New York." This letter is not proven, was objected to as incompetent and proves nothing.

"Complainant's Exhibit Rogers Lee Letter November 4, 1898" (R. 870, introduced R. 387), has already been considered in connection with the testimony of Mr. Lee.

"Complainant's Exhibit Barnes Letter" (R. 872, introduced R. 302) is addressed to the "Remington Standard Co., Chicago, Ill." The letter states: "I wrote you some days ago in reference to some copy-holders, but the Rem-Sho people got the letter by mistake," etc. This letter shows no confusion in the mind of the writer.

"Complainant's Exhibit Franklin Remington Envelopes" (R. 931.) These envelopes are addressed "Mr. Franklin Remington, General Manager, Remington Typewriter, Chicago." "Complainant's Exhibit Siegel Cooper Envelope." (R. 951, introduced R. 658.) This envelope is addressed "C. N. Fay, Remington Typewriter Co., Dearborn St., City," and is postmarked November 5, 1899. "Complainant's Exhibit Caldwell, Ohio, Envelope" (R. 981, introduced R. 566), addressed "Mr. Charles Norman Fay, Mgr., Remington Typewriter Co., Chicago, Ill." It is not apparent how any confusion between the business of complainant and of the Remington-Sholes Company is evidenced by these misdirected envelopes.

"Complainant's Exhibit Crescent Produce Co. Letter" (R. 988, introduced R. 536) is dated October 27, 1900, and is addressed "Remington Typewriter Co., Kansas City, Mo." The letter which was objected to, is not proper rebuttal, is not properly proven, and the witness Catlin, who testifies with regard to it, admits (R. 539) that he knows no one connectd with the firm of the Crescent Produce Company. This letter, even if admissible, could certainly prove nothing.

"Complainant's Exhibit R. H. Edmunds-Rem-Sho Envelope" (R. 998, introduced R. 628) and "Complainant's Exhibit R. H. Edmunds Co. Rem-Sho Booklet" (R. 999, introduced R. 628) are manifestly not proper rebuttal and are incompetent. They were objected to for such reason, but, even if admissible, they prove nothing for complainant.

"Complainant's Exhibit Davis & Rose Letter" (R. 1000, introduced R. 633) is dated September 26, 1900, and is addressed to "Remington Typewriter Co., Richmond, Va." The letter was manifestly not proper rebuttal and incompetent, and was objected to.

We submit that the exhibit letters and envelopes introduced on behalf of complainant fail absolutely to show any confusion in the minds of the writers with respect to complainant and the Remington-Sholes Company. They establish, at most, the fact that there have been a few mistakes upon the part of letter-carriers in different sections of the country in delivering to the offices of the Remington-Sholes Company letters that were intended for the offices of complainant and *vice versa*. The law is well settled, however, that such mistakes upon the part of letter-carriers cannot prove the existence of confusion in the minds of the public as to complainant's and defend-

ant's machines or as to the companies by which such machines are manufactured.

*Sterling Remedy Co.* v. *Eureka C. & Mfg. Co.*, 80 Fed. Rep., 105 (C. C. A.).

*Dadirrian* v. *Yacubian et al.*, 98 Fed. Rep., 872 (C. C. A.).

*Goodyear* v. *Goodyear Rubber Co.*, 128 U. S., 598.

*Turton* v. *Turton*, 42 Ch. Div., 128.

Certainly the marvel of this case must be that with their offices coextensive with the country, and with complainant's agents on the lookout for every bit of material of this kind, there are no instances of mail matter showing confusion in the public mind between the Remington-Sholes Company and complainant. THE CONCLUSION IS SIMPLY IRRESISTIBLE THAT NO SUCH CONFUSION EXISTS.

**Alleged Confusion in Telephone Service.**

Several of complainant's witnesses have testified that some confusion in telephone service has arisen, but this testimony fails to show that it has caused any inconvenience either to complainant or to the Remington-Sholes Company. Thus, for example, Mr. Crandall, the manager of complainant's Chicago office, upon this point merely says (R. 303):

> "We have been called up by the Telephone Co., and conversation opened with us by some business house referring to some business matter, and it would be noted by us before we had gotten very far along in the conversation that they had intended to call up the Remington-Sholes Co."

This witness does not pretend to say that these calls have been numerous, nor when they occurred, nor that

they caused any material inconvenience. By reference to Crandall's deposition (R. 307) it will appear that in the telephone directory the Chicago office of the Remington-Sholes Company and of complainant were indexed as follows:

> "North 572 Remington Sholes Typewriter, Factory—127 Rees.
>
> "Main 3036 Remington-Sholes Co., City Salesroom—204, 126 State.
>
> "Main 137 Remington Standard Typewriter—Wyckoff, Seamans & Benedict, 144 Madison."

Mr. Hobbs, when called in rebuttal as a witness for complainant, made the following statements (although manifestly not proper rebuttal) (R. 552):

> "A. After our telephone number was changed from Main 3036 to Central 1404 we received numerous calls to repair Remington typewriters. The callers usually asked if this was the Remington typewriter, or the Remington Company; but sometimes simply asked for a repair man.
>
> "Q. 9. What was the occasion or purport of these calls upon the telephone of the Chicago office of the Remington-Sholes Co., wherein the callers asked if this was the Remington Co., etc.?
>
> "A. Our telephone number had been changed, and I believe the number of the Remington Typewriter had been changed at about the same time, *which probably caused the confusion.*
>
> "Q. 10. What was the substance of these calls, or what statements or requests were made by the callers?
>
> "A. I think in most cases they asked for a repair man to adjust Remington machines.
>
> "Q. 11. An in response to these calls asking for repair man to adjust Remington machines, were repair men in the employ of the Remington-Sholes Co. sent to the callers for the purpose of making repairs?
>
> "A. THE EMPLOYEES ANSWERING THE TELEPHONE WERE INSTRUCTED TO EX-

PLAIN THAT THIS WAS THE REMINGTON-SHOLES CO., but in some cases the customers asked if we could repair their Remington machines, and were told that we could do so, and a repair man sent.

"Q. 12. How often, approximately, were calls received at the Chicago office of the retail department of the Remington-Sholes Co., of the nature and character described in your previous answers?

"A. Some times several in one day, but an average, I think, of not more than one or two per day.

"Q. 13. But as a general rule, there was one or more such calls on each business day during the time that you were manager of the retail department of the Remington-Sholes Co.?

"A. *We got few, if any, such calls until after May 1st, 1900, when the telephone number was changed.* It was after that that such calls were received."

This testimony of Mr. Hobbs clearly shows that the alleged confusion of telephone calls was temporary and was due to the simultaneous change in the telephone directory of the call numbers of both complainant and the Remington-Sholes Company. It proves, however, that in this, as in all other matters, *the employees of the Remington-Sholes Company were instructed to avoid any possibility of confusion.*

Mr. R. C. Daniel, formerly in charge of the St. Louis office of the Remington-Sholes Company, when called in rebuttal as a witness for complainant, states in this connection as follows (R. 562):

"In some cases, however, parties would call and ask if that was the Remington Typewriter Co. *I would invariably state that it was not—it was the Remington-Sholes Co.*"

When interrogated further as to cases where calls were

made over the telephone in regard to the purchase of machines, he says (R. 563):

> "I remember about one or two or may be three of such instances, and I responded myself."

On cross-examination the witness states that he was in charge of the St. Louis office of the Remington-Sholes Company about one year, and that during such time calls were received from persons wishing repairs made upon other machines than the Rem-Sho and the Remington.

George E. Field, the manger of complainant's Indianapolis office, alleges that considerable confusion in telephone calls had arisen and states (R. 340):

> "This confusion is due to the fact that the Rem-Sho people had their name in the telephone directory under 'Remington-Sholes Company, Typewriters, 122 E. Market.' The name 'Remington Typewriter Company, Wyckoff, Seamans & Benedict, 12 E. Market St.' did not appear in the alphabetical part of the telephone directory until the issue of December, 1898. We had it placed in this way for the reason that several of our friends gave us the information that the Rem-Sho people were getting a number of telephone calls that were intended for us."

Apparently, the change made in the Indianapolis telephone directory, as indicated by the witness, put an end to the alleged confusion in telephone service because it was not asserted that after such time any trouble occurred.

It will thus be seen that such confusion as has arisen in telephone service was temporary and insignificant. Any one familar with telephone service knows that in a busy office there is scarcely a day in which mistakes in telephone calls do not occur. We submit that the testimony fails utterly to evidence in any degree confusion in the public mind as to complainant and the Remington-Sholes Company.

## Rem-Sho Exhibit at Philadelphia Exposition.

At the National Export Exposition held at Philadelphia in 1898, complainant and the Remington-Sholes Company each had an exhibit of typewriting machines. In the Remington-Sholes Company exhibit was exposed an old Sholes & Glidden typewriter, upon which was placed a card bearing the inscription "Two generations of typewriters. This machine was invented by C. Latham Sholes of Milwaukee in the early sixties. Later manufactured by E. Remington & Sons, Ilion, N. Y. It is the original article itself. The 'Rem-Sho' typewriter was brought out by Zalmon G. Sholes, the son of the inventor, and Franklin Remington, the son of the manufacturer of this machine. An instance of the familiar adage that 'History Repeats Itself.'" (R. 498,1172.) It is not seen that any unfairness, much less fraud, can be predicated upon the exposure of this old machine. All that was said about it was true, as the record shows.

The exhibit of the Remington-Sholes Company was marked with a large and conspicuous sign containing the words "REM-SHO TYPEWRITER, MANUFACTURED BY THE REMINGTON-SHOLES COMPANY, CHICAGO, ILLINOIS," and abounded in catalogues, folders, cards, etc., giving the name of the machine and the address of the maker. (R. 1173.) The old Sholes & Glidden machine was displayed, as Mr. Sholes states, "the same as bicycle people sometimes display an old model bicycle for a curiosity" (R. 1192), and had no other purpose than to attract the attention of the passer-by. The exhibit of this "Rem-Sho" machine at the Philadelphia Exposition, at which complainant's ma-

chines were also exhibited, tends to prove the absence of any purpose upon the part of the Remington-Sholes Company to cause its machine to be mistaken for that of complainant's.

In Sebastian on Trade-Marks (4th Ed.), p. 123, it is stated as an evidence of absence of a purpose to deceive:

> "So, again, if the defendant has ventured to display at a public exhibition goods bearing the mark to which exception is afterwards taken (citing *Beard* v. *Turner*, 13 L. T. N. S., 746); or if he has truly stated the connection between himself and the original adopter of the trade-mark." (Citing *Emerson* v. *Badger*, 101 Mass., 82, and *Gilman* v. *Hunnewell*, 122 Mass. 139.)

## Alleged Imitation of Complainant's Machine.

The attention of the court has been directed already to the fact that the machines placed upon the market by the old Remington-Sholes Typewriter Company comprised a highly ornate bronzed frame differing radically in appearance from the conventional black enameled frame common to complainant's and other machines. This identical style of ornamental bronzed frame was employed also by the Remington-Sholes Company until the summer of 1900. By that time the test of service had proved that the "dress" or "livery" of defendant's machine—as its frame may rightfully be termed—however distinctive and pleasing to the eye, would not stand the wear and tear of long continued service, and it was therefore abandoned.

In the course of its rebuttal testimony (R. 568) complainant's counsel offered in evidence the No. 6 style or model of Rem-Sho typewriter that had recently been

placed upon the market by the Remington-Sholes Company. This machine manifestly has no place in the case. The evidence with respect thereto was objected to as not proper rebuttal, but if allowed to stand cannot help complainant.

Mr. Hobbs, formerly manager of the Remington-Sholes Company's Chicago office, but now manager of the United Typewriter & Supplies Company, is the only one of complainant's witnesses who has seen this No. 6 Rem-Sho, although Mr. Crandall, complainant's Chicago manager, with his usual facility for adapting his testimony to complainant's emergencies, while admitting that he had not seen it, volunteers the statement from "information" (R. 545) that "it is quite similar in general effect and appearance to the No. 6 Remington typewriter."

**Conventional Coloring and Numbering of Machines.**—The following from the cross-examination of Mr. Hobbs shows in a general way the established custom of typewriter manufacturers with regard to the numbering of the different models or styles of their machines and as to their coloring and ornamentation (R. 560):

> "X-Q. 56. You know, do you not, that various makers of typewriting machines number their models of styles of machines, beginning with the numbers 1, 2, 3, etc., and numbering each new model with a higher number as such model is brought out?
>
> "A. That is the custom of some companies, including the Remington, Smith-Premier and Jewett.
>
> "X-Q. 57. You know, do you not, that the typewriting machines of most of the standard makes have black enamel frames, striped more or less with gold?
>
> "A. Most machines have black enamel frames, and I believe they are usually striped with gold.

"X-Q. 58. This is true, certainly, is it not, of the Densmore, the Smith-Premier, the Caligraph, the Yost and the Hammond?

"A. It is true of most of the machines you mention, but the Densmore is not striped, the Hammond is not black, and the Caligraph is striped in gold and other colors."

The testimony of Mr. J. A. White must set at rest any question, *first*, as to the common practice of all manufacturers of typewriting machines to use frames of the same general style, coloring, etc., as that of the Remington Standard and others, and as to the custom of progressively numbering the various styles or models of the machines; and *second*, as to the true reason why the Remington-Sholes Company had adopted the particular design of frame and coloring shown in its new No. 6 machine. Mr. White has for a number of years past been the Chicago manager of the F. S. Webster Company, the business of which is the handling of all makes of typewriting machines on the second-hand market (R. 1420), and his experience in the sale of typewriting machines has extended over a period of twelve or fourteen years. He states that it is the common practice of all typewriter manufacturers (with few exceptions) to color their machines with black japan or enamel, and that nearly all manufacturers of typewriters have been in the habit of numbering their various models from 1 up as high as No. 8 (R. 1422), these numbers being generally stencilled in gilt or otherwise in some conspicuous place upon the machine. This witness states further that nearly all typewriting machines are striped in gold or colors or both.

The practice followed by manufacturers of typewriting machines with respect to color and ornamentation is much the same as that of sewing-machine manufacturers, bi-

cycle builders or the like, and this custom is so universally recognized that the court might well take judicial notice of it. In the testimony of Mr. Clapp an illustration of the familiar New Century or Caligraph typewriter was offered (R. 1436, R. 1484), and a glance at this will show a fair instance of the almost universal practice of typewriter manufacturers as to the color, ornamentation and numbering of their machines. The testimony shows also that it is the custom of practically all manufacturers to supply their customers with keyboards of the universal or Remington style. (R. 1143.)

**Complainant can have no Exclusive Right to the Style or Coloring of its Machine Frame.**—A comparison of the "No. 6 Rem-Sho" machine with complainant's No. 6 machine will show at a glance marked differences in appearance that must appeal to the eye of anyone familiar with complainant's machine. The Rem-Sho No. 6 machine in the style and coloring of its frame is upon the conventional lines common to all makes of typewriting machines. There is a resemblance between the two machines as there is a resemblance between any two typewriters having black enamelled frames, or as there is a resemblance between two sewing machine frames of ordinary conventional design and color, but beyond this there is manifestly nothing suggestive of imitation.

The frame of the Rem-Sho No. 6 machine no more nearly resembles the frame of complainant's No. 6 machine than it resembles the frame of the old Remington No. 2 typewriting machine which was colored in black enamel and was ornamented with the same conventional lines as complainant's No. 6 machine. In the advertisement of the old Remington No. 2 machine, found in

Complainant's Record, 929, is shown an illustration of the machine as sold by E. Remington & Sons over twenty years ago. (R. 93.) A bare inspection of this illustration must disclose the fact that so far as the design, coloring and ornamentation of the frame is concerned it possesses the features common to both the Rem-Sho No. 6 and complainant's No. 6 machine, and the universal keyboard is also the same as in the later machine. The patents of Sholes, Brooks and others under which this machine was made by E. Remington & Sons have long since expired, the Brooks patent on the upper and lower case feature, which mainly differentiated the machine from the No. 1, having been granted on April 30, 1878. Upon the expiration of these patents the public became vested not merely with the right to use the inventions, but also to use them with the same style of frame in which they had been embodied by E. Remington & Sons.

The authorities are uniform and conclusive against complainant's attempt to monopolize either the design of this frame, its black coloring or conventional ornamentation, or the common practice of marking the different models with progressive numbers, which complainant's witnesses all admit were simply intended to indicate the styles of the machines.

*Coats* v. *Thread Co.*, 149 U. S., 562.

*Wilcox & Gibbs Co.* v. *The Gibbons Frame*, 17 Fed., 623.

*Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S., 169.

*Wilcox et al.* v. *Kruse etc., Co.*, 23 N. E. Rep., 1146.

*Candee* v. *Deere*, 54 Ill., 439.

*Philadelphia N. M. Co.* v. *Rouss*, 40 Fed. Rep., 585.

*Faber* v. *Faber*, 49 Barb., 358.

*Moorman* v. *Hodge*, 2 Sawyer, 78.
*McKee Furnace Co.* v. *LeBaron*, 127 Mass., 115.
*Fairbanks* v. *Jacobus*, 14 Blatch., 337.
*Putnam Nail Co.* v. *Delaney*, 140 Pa. St., 205.

**Why Rem-Sho Frame Was Changed.**—While in view of the testimony it may not be necessary for the Remington-Sholes Company to explain why it saw fit to adopt the generally accepted style of machine frame of conventional design, color and ornamentation, the testimony of Mr. White clearly shows why this change was made. Being in the second-hand business and in such way having had occasion for several years to handle the Rem-Sho machine, he is in position to speak more intelligently than anyone else as to the practical merits and demerits of the machine. He testifies upon this point as follows (R. 1421):

"Q. 9. As a result of your experience and observation have you noticed anything peculiar about the wearing quality of the copper-plate or bronze finish of the Rem-Sho machines handled by the Webster Co., since you have been its Chicago manager, and have you noticed anything peculiar about the wearing quality of the enamelled black on the same style of frame that had the copper-plate finish?

"Same objection as before and on the further grounds that the record does not show that the facts are such as to qualify the witness to testify as an expert on this subject.

"A. I have; it has been my experience that the copper-plate has worn off and caused considerable deterioration in value of the machine and in use has been objectionable to operators on account of corrosion, whereas the japan on the ornamental frame has chipped off, spoiling the appearance of the machine, thereby depreciating its value.

"Q. 10. Did you ever make any statement to any of the officers of the Remington-Sholes Company in

regard to the wearing qualities of the copper-plate finish or black enamelled finish Rem-Sho machines?

"A. Something over a year ago I had a conversation with Mr. Paulson, at that time treasurer of the Remington-Sholes Company, in reference to the finish of the machine, and strongly recommended changing the finish and japanning the machine; in the same conversation I recommended that they do away with the ornamental finish on the machine and make it plain, giving as my reason that owing to previous experience it would wear better and in my mind make a better impression."

These reasons given by Mr. White and the obvious fact mentioned by Mr. Hobbs (R. 556) that the design of the No. 6 Rem-Sho frame is much lighter and consequently cheaper are ample to justify the change by the Remington-Sholes Company to its new style of frame, however reluctantly it might abandon the old.

In *Lorillard Co.* v. *Peper*, 86 Fed. Rep., 956 (see 961), it was strongly urged as an evidence of fraudulent intent that defendant had so changed the shape, coloring, etc., of his package as to more nearly approximate complainant's. The court in disposing of this contention said:

> "It is true that thereafter defendant put out this package, that his sales increased, and that plaintiff's decreased. And these things, of course, suggest that deceptive imitation which is unfair competition. But, as against this, it must be noticed that the form of the package and the colored stripes were not new in defendant's business; so in these respects he was not simply imitating the plaintiff. Both the forms and the color of the stripes were in frequent use among manufacturers, and the plaintiff had no special rights in respect to either. It has doubtless been found by experience that a cylindrical package is more convenient for slipping into and taking out of a pocket, and therefore they who use tobacco prefer packages in that form. And, as between a white and a striped package, the variety of color appeals to the

> eye, and, other things being equal, the purchaser is apt to take the latter. But these are matters of convenience and attraction in common use, and which any manufacturer is at liberty to adopt, and in adopting which he trespasses not the slightest upon the rights of others." (P. 961.)

While defendant's principal was entirely within its rights in thus changing the design and coloring of its machine frame, the court will not fail to notice that this change was not made until nearly two years after the bill of complaint had been filed in this cause. It cannot therefore detract from the importance of the fact that during the whole period in which the bill asserts that defendant and its principal were endeavoring to pass off their machine for complainant's they were offering to the public a typewriter, the highly ornate bronzed frame of which was so utterly unlike complainant's simple black frame, both in design and color, that the two machines could by no possibility have been mistaken one for the other by any person familiar with either.

The case at bar has no likeness whatever to those cases in which a complainant's product has a distinctive dress or "livery" that is imitated by a defendant with intent to deceive the public, for in this case complainant's machine frame has no distinctive features, its style and coloring are public property and the No. 6 Rem-Sho frame resembles it only in the conventional features common to all typewriting machines.

## Conclusion.

The case at bar presents to this court for the first time the question of public importance as to what extent the right to use a personal name as a part (or even as the whole) of a corporate name is limited by the prior adoption of such name by another as a designating mark. We submit that while certain of the prior cases prohibit the use of a single personal name, *coupled with other words that make up the full trade name of another* (as in Higgins Co. v. Higgins *Soap* Co. and DeLong v. DeLong *Hook & Eye* Co., *supra*), no reason exists and no authoritative case can be found to prevent the use of a personal name in the recognized legitimate way, either as the whole or as part of a corporate name. On the contrary, the weight of the decisions of the inferior courts and the law deducible from the decisions of this court, make plain the fact that in the absence of fraud or estoppel, the use of his name in a corporation, like every other honest use, is open to any man.

At the very outset defendant's principal laid its course and nailed its flag to the mast when, in answer to complainant's initial protest against the use of the names Remington and Sholes, Franklin Remington wrote (R. 1444):

> "In using our names, the right to which we have never alienated, we have scrupulously avoided all deception of the public both in the superficial appearance and construction of our machine, and in all our printed and verbal representations regarding it."

To this course it has constantly adhered.

The charge of this bill is the fraudulent invasion of complainant's rights by defendant. The burden was upon complainant to prove this charge. How has it attempted to do this? From the four corners of the earth it has gathered a mass of improper, irrelevant and incompetent testimony—foreign advertisements, with which defendant admittedly had no connection, newspaper "squibs," hearsay depositions of its employees, manufactured testimony of its detectives—and with such has padded its record of over a thousand pages. The Circuit Court of Appeals has burdened defendant with the cost of this material, although it has found that there is not "in this voluminous record sufficient evidence that defendant has itself done anything to promote confusion in the minds of the public," unless such is to be inferred from the bare use of the name Remington-Sholes. We have shown that under the circumstances of this case no such inference of fraud can be drawn.

The two questions vital to this case are:

(1) Has defendant the right to use the fanciful trademark "REM-SHO"?

(2) Has it the right to use the name of its principal, the REMINGTON-SHOLES COMPANY?

As to the first question, we submit that the unanimous voice of the Circuit Court of Appeals has made proper answer in its sententious finding that

> "the arbitrary name Rem-Sho, however, does not seem to us to be sufficiently like Remington to be by itself a reasonable cause of confusion."

As to the second question, it is not asserted that the reputation of his ancestors conferred upon Franklin Remington any superior RIGHT to use his name, although such family reputation supplied a most cogent REASON why he should perpetuate and avail of such name in any

lawful enterprise—whether individual or corporate—to which his whole time, capital and energy were devoted.

We simply ask that to the facts of this case be applied the uniform decisions of this court, that a man has a right to use his name in every reasonable way "the same as other property" (*Brown Chemical Co.* v. *Myer, supra*), subject only to the condition that where such name has acquired a secondary signification it "must be accompanied with such indications that the thing manufactured is the work of the one making it, as will unmistakably inform the public of that fact" (*Singer Mfg. Co.* v. *June Mfg. Co., supra*). And we invoke a consideration of the salient facts that the use of a personal name in that of a corporation is a universally recognized reasonable use, and that the conjoint use of the TWO SURNAMES, Remington and Sholes, and their invariable accompaniment by the full address of defendant's principal, afford a most complete "indication of the source of manufacture."

The application of the law thus laid down by this court will wipe out the stigma of fraud placed upon this defendant, upon its principal and upon the good name of the younger Remingtons, by the decree of the Circuit Court of Appeals.

Respectfully submitted,

AUSTEN G. FOX,
JAMES H. PEIRCE,
GEORGE P. FISHER, JR.,
WILLIAM H. DENNIS,
*Of Counsel.*

# APPENDIX.

## TRANSLATION OF OPINIONS OF THE GERMAN COURTS IN LITIGATION REGARDING THE NAME REMINGTON-SHOLES.

### Opinion of the German Koenigliches Kammergericht.

Rendered:
July 3, 1897.
(signed) Krug,
Court Clerk.

In the Name of the King.

The case of Henry Newald of Berlin, defendant, cross-complainant and appellant, represented by attorney Fuchs I of Berlin,

*against*

The firm, Glogowski and Co., plaintiff, cross-defendant, and appellee, represented by attorney Dr. E. Fuchs at Berlin.

In regard to the infringement of the trade mark right, the "10 Civilsenat des Konigliches Kammergericht" (Supreme Court of the Kingdom), have, with the concurrence of the Supreme Justice Busch chairman, Supreme Justice Rabe and Nehse, District Judges Delbruch and Kubler, decided that:—

The judgment rendered March 19, 1897 by the 'vierten Kammer fur Handelssachen des Koniglichen Landgerichts *I*" at Berlin, be altered, as follows:—

1. The petition of the plaintiff is denied.

2. As to the cross-complaint, it is decreed that the plaintiffs acknowledge that they are not entitled to enjoin the defendant from selling the typewriters of the Remington Sholes Typewriter Co., or the casing or enclosures therefor, upon which this firm name is marked, nor from using this firm name in connection with advertisements and the like in the course of business.

The further prayer of the cross-complaint of the defendant and appellant is denied.

3. The costs of court are divided between the parties, the other costs of the parties are set-off against one another.

4. As security for the performance of judgment (2), the plaintiff shall furnish a bond of 10,000 M. payable in gold or in notes of the German Empire or the Prussian States, such bond to be conditioned upon the execution of the judgment.

## Statement of Facts.

The plaintiffs are engaged in this city in the business of dealing in American typewriters, which they obtain from Wyckoff, Seamans & Benedict at New York. They allege that they sell in their own name and on their own account, whereas the defendant claims that they sell said machines simply as agents of the above mentioned American concern.

On Feby. 8th, 1896 the word "Remington" was entered as a Trade-Mark in the Register of the Imperial Patent Office at Berlin for and on behalf of the predecessors of plaintiffs Glogowski & Son; said trademark is intended for typewriters and their parts, as well as incidentals; the line of business in which said trademark is to be used, is said to be "The sale of the aforementioned

articles." This trademark has become the property of the plaintiffs. The certificate of registry introduced by the plaintiffs (Record P. 233) is considered.

The plaintiffs allege that with the consent and at the instance of Wyckoff, Seamans & Benedict they have caused this trademark to be registered; in support thereof they have introduced a copy of a document dated Oct. 3, 1894 marked "Power of Attorney," to which reference is made (Record P. 40.)

The defendant carries on in this city the sales of American typewriters made by the Remington-Sholes Typewriter Co. at Chicago. He himself states that he carries on such sales as the employe of said concern and on its account. The typewriters of said American concern introduced into commerce by the defendant, are marked with the full name of said house; such name appears likewise on the advertisements and price lists issued by the defendant; a specimen of such an advertisement is introduced for inspection (Record p. 19) and is considered.

The plaintiffs believe that the defendant, in carrying on such business, violates their trademark rights and moves for a decree as follows:

*a*) That the defendant, on pain of fine to be imposed in each case of violation, refrain from placing the word "Remington" either singly or in connection with other words, upon any typewriters or casings or coverings thereof, and from circulating in commerce any typewriters so marked, and from using such marks in connection with any advertisements, price-lists, letters, recommendations, bills, etc.

*b*) That the defendant remove the mark "Remington" from all typewriters, price-lists, letters of recommendation and other printing matter in its possession, or in case

such removal cannot be effected in any other way, then destroy all typewriters and utensils bearing the aforesaid marks. To award immediate execution of the judgment on giving security.

The defendant makes a point as to his competency to be sued, because he does not sell in his own name, but as an employe of the Remington-Sholes Typewriter Co.

The defendant further insists that he has a right to use, in connection with typewriters consigned by said concern, the business name containing the word "Remington"; that said word is a proper name; that two men Franklin Remington and Carver Remington are interested in said business; that they are descendants of the first manufacturer of typewriters, Samuel R. and that years ago they associated themselves with Zalmon Sholes in a concern for the manufacture of typewriters under a business name containing the words Remington and Sholes; that said concern has produced a typewriter totally different in construction from all others; that for many years they have been selling these machines all over the world under such business name, and that its right to place such business name upon its machines has never been contested; that the competing house of Wyckoff, Seamans & Benedict in the United States has never sought to prevent it from placing its business name upon its articles; that only when said Wyckoff, Seamans & Benedict were about to establish a branch at Berlin, they procured the plaintiffs to have said trade-mark registered; that according to S. 13 of the trademark act the trademark rights thereby acquired would not, however prevail as against the Remington-Sholes Typewriter Co. In support of the allegation that Franklin Remington and Carver Remington are interested in said concern, the defendant has produced the affidavits of Franklin Remington and Zalmon G. Sholes,

dated Sept. 3, 1896, which are referred to (see translation pp. 198-201 of record).

The defendant further insists that the plaintiffs are not legally entitled to the trade-mark Remington and under S. 9 of the trademark act he files his cross complaint asking that said trademark be stricken from the register on the ground that its contents are repugnant to actual facts and give rise to a decention. For he says that Remington is a proper name; that such was the name of the first manufacturer of typewriters at N. Y. the plaintiffs Glogowski & Co. or the partners of said firm do not bear that name and are not entitled to its use; nor has the house of Wyckoff, Seamans & Benedict in whose products the plaintiffs are dealing here, any right to use the word Remington as a trademark, as no member of the Remington family has ever permitted them to use such name for their products; that the word Remington gives rise to a deception, inasmuch as the purchasing public may believe that only from the plaintiffs may they obtain articles coming from the famous works of the first manufacturer of typewriters.

The defendant thus moves to dismiss the complaint, and he also files his cross-complaint moving as follows:

*a*) To decree that the trademark Remington entered for the plaintiffs in the trade-register of the Imperial patent office be stricken out therefrom or that the plaintiffs be made to consent to such striking out.

*b*) To order the plaintiffs to acknowledge that they are not entitled to prohibit the defendant from carrying on the sale of machines made by the Remington-Sholes Typewriter Co., and their casings and covers marked with said business name nor from using said firm name in connection with advertisements or otherwise in the regular course of business.

To award immediate execution of the judgment on giving security.

Against the claim that the plaintiffs cannot by reason of this trademark prohibit the use of the proper name Remington for the goods of the Remington-Sholes Typewriter Co., the following points are made:

The name Remington contained in said business name has been sneakingly appropriated, in order to unduly compete with the consignors of the plaintiffs; for Franklin Remington who joined said concern, had never theretofore constructed or sold any typewriter, nor had Carver Remington. In support hereof the plaintiffs refer to the affidavit of director C. W. Seamans at N. Y. and produce the affidavit of Thomas Richardson, dated June 23rd, 1896, of Silas W. Crandall, dated June 27, 1896, and of Clarence W. Seamans, dated Dec. 14th, 1895 (see translation record pp. 182-192, 194-196, 150-160). To these documents reference is made.

As regards the cross-complaint, as far as the same seeks to have the trademark of the plaintiffs stricken from the register, the plaintiffs state the following. They sell the machines of Wyckoff, Seamans & Benedict of N. Y. and at their instance have caused the word Remington to be registered as a trademark in connection with such sales, the manufacturers being legally entitled to affix said word to their manufactured articles. For the first typewriter factory has been conducted at New York under the name of E. Remington & Sons, they marked their products with the name Remington. This concern with its business name and all its rights has passed into the hands of the Standard Typewriter Mfg. Co.; the latter in consequence thereof changed its name to Remington Standard Typewriter Mfg. Co. and the last named concern with its business-

name and all its rights finally passed into the hands of Wyckoff, Seamans & Benedict. This concern, therefore, has the right to mark its goods with the name Remington, it exercises this right in the U. S. and the same has never been contested. In support of this contention the plaintiffs introduce an affidavit of Clark Seamans, dated Oct. 4, 1895 (pp. 38 and 39) of Wyckoff, Seamans & Benedict, dated Oct. 3rd, 1894 (P. 40) also the above mentioned affidavits of Clarence W. Seamans and Thos. Richardson, also the certificate of Judge Hardin of date Nov. 30, 1888 (pp. 104-106), the affidavit of Elizabeth Remington (pp. 120-124), the certificates of registry by Benton J. Hall of date Oct. 23, 1888 (pp. 176-180) and by J. P. Fisher of date May 7, 1896 (p. 172.) Reference is had to all those documents.

The defendant contends that Franklin and Carver Remington have allowed the use of their names exclusively in connection with the Remington-Sholes Typewriter Co. He claims that Franklin Remington together with Zalmon Sholes have invented the typewriter named after them, that they started the company and took an active interest in its business; Franklin Remington is manager of the factory, whereas Carver Remington is only financially interested. As to the alleged right of Wyckoff, Seamans & Benedict to use the mark Remington it is insisted that they never acquired that right from any member of the Remington family, although they obtained the rights in the business name of the Standard Typewriter Co from the parent of Franklin and Carver Remington.

In the court below, by judgment of Kammer 4 fur Handelssachen des kgl. Landgerichts 1 of March 19, 1897 the cross-complaint was dismissed and judgment was rendered against the defendant in manner and form as de-

manded by the plaintiffs. As regards the facts, so far as not above stated, reference is made to the finding of facts in said judgment.

As ground of the above decision it is stated that it appears from the allegation of the parties that the defendant's motion to strike the trademark from the register is improper, because Wyckoff, Seamans & Benedict have the right to use that mark for their manufactured products. The decree against the defendant is based on the trademark protection due the plaintiffs, the defendant cannot avail himself of S. 13 of the trademark act, because being the general agent of Remington-Sholes Typewriter Co. it is not competent for him to enforce the rights in that business name on its own behalf.

The defendant has entered his appeal from said decree of April 15, 1897, on the 20th of April, 1897, and moves to modify said decree so as to dismiss the complaint and to find against the plaintiffs and cross-defendants according to the prayer of the cross-complaint. The defendant considers the reasoning of the first decision bad. If the defendant, though only the agent of the Remington-Sholes Co., can properly be sued, he may also avail himself of the provisions of the law beneficial to his principals. According to S. 13 of the act the plaintiffs case must fail because the machines bear only the names of the said Company. As to the cross-complaint, the statement contained in the opinion that the defendant has admitted, that the plaintiffs or their successors had acquired the business-name and right from a member of the Remington family, is incorrect, for the defendant has disputed this very point and so it appears in the statement of fact in said judgment. Defendant refers to the affidavits of Franklin and Carver Remington at Chicago to show that no member

of the Remington family has ever granted the right to Wyckoff, Seamans & Benedict to use the name Remington in the course of business. The motion to strike the trademark of the plaintiffs from the register is, therefore, according to S. 9 of the act just.

The plaintiffs move that the appeal be dismissed. They argue several legal points in support of this motion. The statement by the defendant that he has only acted as the agent of the Remington-Sholes Co. they seek to contradict by a letter of Attorney Meissner of June 16, also by statements in the brief of the defendant of May 13, 1897 (record, vol. II P. 24 *et sec.*), as both documents speak of "the business of the defendant."

## Opinion.

1. If that petition of cross-complaint which has for its object the cancellation of the trademark Remington registered for the plaintiffs must be granted, then the decision must be given, without further consideration against the plaintiffs. If this is the case, according to Sec. 12, sub sec. 2, of the act of May 12, 1894, as to trademark rights, the plaintiffs cannot now, nor against any previous infringement, exercise their right to an injunction. Therefore, it is first to be considered, whether or not, this part of the cross-complaint is well founded.

The motion to strike from the register is based on S. 9 of the act; in support thereof it is contended that the contents of the plaintiffs trademark Remington do not accord with actual facts and give rise to a deception. The competency of the defendant to bring this complaint to strike from the register, against the plaintiffs as the registered owners of said trademark, cannot, in the light of S. 9, be subject to any doubt. According to S. 9, No. 3, anybody

may in a case like this, appear as plaintiffs, because the interests of the public require the nullification of deceptive trademarks.

But he who brings such nullification suit is bound to prove actual ground, in order to sustain it; he must allege and prove facts and circumstances, from which it must appear both that the trademark is repugnant to actual facts and also that its contents create a danger of deception. The facts alleged by the defendant do not justify these conclusions.

The defendant is correct in his contention that a trademark, which consists simply in a proper name, may be repugnant to actual facts. For the mark has direct reference to certain specified articles, it is intended to signify them as the articles of a definite concern. If a proper name is chosen, which to the purchasing public or the commercial world generally suggests the inventor or producer of particularly useful and meritorious articles, the use of such proper name as a trademark to signify articles of a different producer or seller, may indeed conflict with actual facts.

The trademark Remington chosen by the plaintiffs is undoubtedly a proper name; a bearer of that name was the first one to construct typewriters adapted for practical use, the idea of practical typewriters is closely associated with that name. The plaintiffs Glogowski & Co. as proprietors of that trademark are not *personally* entitled to the use of that name. However it is incontestable, that the plaintiffs deal exclusively in the products of the American house of Wyckoff, Seamans & Benedict and that with a view to that business and with reference to the products of that house, they have caused the trademark to be entered in the register. If, therefore, the name

Remington may be used as a trademark for those products without violating actual facts, then, in the case at bar, the idea of a deceptive trademark must be eliminated. In order to prove that these articles may lawfully be marked with the name Remington the plaintiffs allege that their manufacturers Wyckoff, Seamans & Benedict, are the immediate successors of that typewriter concern, which under the firm name and style of Remington & Sons was run by the first manufacturer, Samuel Remington. Among the numerous documents which the plaintiffs have introduced in support of their allegation as to that succession, the following are, under S. 403 Civil Code, considered competent evidence.

Three certificates numbered 1043, 1044 and 1045 respectively under the hand of Secretary of State, Richard C. Olney, of date March 11, 1896 (see translations pp. 171-175, 102-107 and 176-181 of record).

Two certificates, under the hand of Secretary of State Palmer, dated Feb. 29th, 1896 and April 23rd, 1896 respectively (see translations pp. 164-168, and 128-140 record).

By these documents it is certified to that the Standard Typewriter Manufacturing Company has caused the word Remington to be entered as its trademark for typewriters in the trademark register at New York on Oct. 23rd, 1888, their predecessors E. Remington & Sons having marked their products with that word even since 1880; said Company changed its name on Nov. 30, 1888, to Remington Standard Typewriter Manufacturing Company; the latter has become merged in the concern of Wyckoff-Seamans & Benedict, having assigned to said concern all its rights, titles, and interests, particularly also said registered trademark.

Under these circumstances it cannot be assumed that the use of the word Remington as a trademark for the typewriters manufactured by Wyckoff-Seamans & Benedict conflicts with actual facts. This word was intended as a suggestion that said concern has become the successor of the first manufacturing concern of Remington & Sons and continued to produce and sell machines which were made by said Remington & Sons under the same name. The defendant has not shown that these facts have been incorrectly stated by the plaintiffs. He states himself that Wyckoff, Seamans & Benedict acquired at the time from the father of the Remingtons the business-name and right of the Standard Typewriter Company. Their continuing to mark the products with the old name of Remington and causing said word to be protected as their trademark, does not violate actual facts.

It is true, the defendant contends that the Standard Typewriter Company never acquired the right to incorporate the name Remington into its business-name or to register a trademark containing that name, from the Remington family, or any member thereof, nor that any member of the Remington family has given that right to Wyckoff, Seamans & Benedict; in support of this contention the defendant refers to the brothers Franklin and Carver Remington at Chicago. These proofs, though they might otherwise have great weight, appear, however, irrelevant in view of the fact, that for the last nine years the Standard Typewriter Company has used the word Remington in its business-name without any molestation and that for the same space of time it has used the trademark Remington. For if Wyckoff, Seamans & Benedict have become the final successors of the old house of Remington & Sons and continue to manufacture

and sell their product, then the old name Remington as a mark on such products cannot be regarded as intrinsically correct, although the members of the Remington family have not given their consent to the use of that name.

The facts cited by the American house of Wyckoff, Seamans & Benedict in support of their right to use the name Remington, may, however, avail the plaintiffs as well, if the question to be settled is whether the trademark conflicts with actual facts; for here we have to consider the name of an American manufacturer and also the articles obtained by the plaintiff from the United States; if the latter, without violating actual facts, may be marked with the name Remington in the United States, then it cannot be assumed that the same name used for the same product violates actual facts in this locality. At any rate, the defendant has not supplied the necessary proofs tending in that direction.

Nor has it been shown, that the adoption of the word Remington for the articles of the plaintiffs, creates any danger of deception. It would have been incumbent on the defendant to show, that the article sold by the plaintiffs under that trademark is not identical with the one which is suggested to the commercial world and the purchasing public by the name Remington; for in order that the motion to nullify may be sustained, the contents of the trademark must, under S. 9 No. 3 of the act, be so deceptive, as to cause mistake regarding the kind and quality of the article. In this respect the defendant has failed to show any tangible grounds to support his motion to nullify.

These considerations have led us to conclude that the cross-complaint, so far as it seeks to have the trademark of the plaintiffs annulled, must be dismissed.

2. The complaint and the cross-complaint (*b*) bear such relation to each other, that if the complaint can be sustained, the cross-complaint must be dismissed and *vice versa.*

In deciding these matters we must start from the premise, that the articles which the defendant sells in this locality, are manufactured by the American house of Remington-Sholes Typewriter Co. at Chicago. Marked with the name of that house, they are introduced by the defendant into commerce, and that name may also be found upon the announcements and advertisements of the defendant. The plaintiffs take the position that by virtue of their trademark rights they may enjoin the Remington-Sholes Typewriter Co. from the use of that name. For two reasons this position cannot be regarded as sound.

In the first place, under SS. 12 and 20 of the act of May 12th, 1894, only such use of a registered trademark can be denied to third persons, as may cause mistakes or confusion about commercial articles; if under the existing facts, such danger is out of the question, then there can be no infringement of the trademark. This principle must be particularly adhered to in the case of a single word used as a trademark. After such a word has been registered its use in commercial life is not necessarily to be condemned, but such use is only so far improper as it may give rise to the possibility of a mistake or deception. According to this principle, the plaintiffs cannot, in the case at bar, be granted the right to enjoin the defendant for their trademark consisting of the one word Remington, cannot be confused with the appellation "Remington-Sholes Typewriter Company," even by purchasers that would not pay attention to the particulars of the trademark. This is not an insignificant distinction, one that

would but little effect the total impression produced by the trademark but a material and striking difference barring all danger of a mistake.

In the second place, the defendant to defeat whatever rights the plaintiffs may have to an injunction, may properly avail himself of the saving clause in S. 13 of the act of May 12, 1894.

The court below denied to the defendant, as the general agent of the Remington-Sholes Typewriter Co. at Chicago, the right to enforce the protection of this trademark. We are unable to sustain this decision. No matter whether the defendant—as he himself alleges—is an employe of said American house or—as the plaintiffs say—he does business on his own account; in either event it is competent for him to use, in Germany, the American business-name in connection with the goods of the American concern in which he deals exclusively. In the first place such trade-mark protection may be derived from S. 23 subsec. 1, of the act. According to the proclamation of the Chancellor of Sept. 22, 1894 (see Reichsgesetzblatt P. 521) the same protection is granted to German trademarks in the United States as to American ones; therefore the protection of the law of May 12, 1894 extends likewise to American concerns, that have no branch in this locality. This protection must, without discrimination, extend to all the goods of the American house which are offered for sale in Germany, although there is no branch of said foreign house here; from this it follows that American goods which are offered for sale here upon commission or by merchants on their own account, are entitled to the same protection. The protection of the act of May 12, 1894 which is guaranteed by S. 23, subsec. 1, extends likewise to the right mentioned in S. 13, to affix the business name and information about the manner and

place of production, on goods, on their covers and to use them in the course of business. Accordingly, the defendant, who in this locality sells the typewriters of the Remington-Sholes Typewriter Co. of Chicago cannot be prohibited from affixing said business name upon the goods of said house nor from using it in the course of business, or announcements, advertisements, etc. It is not open to dispute, that the defendant deals only in typewriters made by said concern, and that he actually obtains his goods from said concern.

The plaintiffs have tried to establish that the Remington-Sholes Typewriter Co. has unlawfully and sneakingly appropriated the word Remington. They do not dispute that two descendants of the typewriter manufacturer Remington, Franklin and Carver Remington, were among the founders of the concern and are still interested in the same; but again they claim that Franklin and Carver Remington entered into said concern only pro forma, to bestow upon it an apparent right to use their name so well known in this line of business. However, whatever the plaintiffs have actually shown by way of foundation to their opposition to the use of the name Remington can in no wise give rise to the conclusion, that in this instance a business name has been sneakingly appropriated. The plaintiffs have confined themselves to the following statements: Franklin and Carver Remington are the sons of Samuel Remington, one of the copartners of the old firm of Remington & Sons; neither of them has ever had anything to do with the running of the business of said firm, or, before entering into the present business under the name of Remington-Sholes Typewriter Co. ever occupied himself with the manufacture of typewriters. But even if both these points had been fully established, it would not result therefrom, that the

two Remingtons would not become real associates in said new house and were only pro forma engaged by said house, that their name might be used for improper purposes. For it is quite possible, yea even probable, that they should have seriously devoted themselves to the business of their father, and acquired special knowledge, in which they were formerly lacking. To choose this business, in order to take advantage of the reputation attached to their name in this line of business, they have a perfect and indisputable right.

The motion of the plaintiffs for the taking of deposition of the manufacturer Seamans as to the above stated allegations of fact is, therefore, denied. But if the plaintiff's objections to the right to use the business name of the Remington-Sholes Typewriter Co. must be overruled, they cannot, according to the above reasoning, be conceded the right sought by their complaint of enjoining the defendant; it follows from the dismissal of the complaint that a decree be entered against the plaintiffs granting the prayer of the cross-complaint (*b*) referring to the acknowledgment of the defendant's right, to use in the course of business the name Remington-Sholes Typewriter Co. as a trademark for the goods manufactured by them.

The decision as to the costs of suit rests on S. 88 Civil Code.

(signed) BUSCH, RABE, NEHSE, KUHLER

also for District Judge Dellbruck who is no longer a member of the "Kammergericht."

Promulgated.

Berlin the 15 October 1897.

(signed) MITTELSTADT

(SEAL OF THE COURT) Court Clerk of the "10 Civilsenats des Konigliche Kammergerichts."

## Opinion of the German Reichsgericht.

IN THE NAME OF THE EMPIRE.

In the case of the firm, Glogowski & Co. of Berlin, plaintiff and revision plaintiff, represented by counsel, Patzki of Leipsig,

*against*

Henry Newald, Merchant, of Berlin, defendant and revision defendant, represented by counsel, Sachs of Leipzig.

The "Reichsgericht, (Supreme Court) zweiter Civilsenat," by the concurrence of the President, Dr. Binger and the "Reichgerichtsrathe," (Supreme Justices) Wielandt, Dr. Petersen, Rospatt, Fortsch, Remele, Petrey, at the oral hearing of Mar. 4, 1898 have handed down the decision:—

With regard to the judgment of the "zehnten Civilsenats des Koniglich Preussischen Kammergerichts," at Berlin of July 3, 1897, the following revision is remanded, the costs of the court of revision are placed upon the revision plaintiff.

"Von Rechts Wegen" (By reason of the law).

STATEMENT OF FACTS.

The firm Glogowski, plaintiffs, are engaged in Berlin in the business of dealing in American typewriters, which they obtain from the firm Wyckoff, Seamans & Benedict at New York. They allege, that these sales are carried on in their own name and for their own account, while the merchant Newald, defendant, claims, that they sell the machines simply as agents of the American firm.

On February 8, 1896, the word "Remington," was entered as a Trade-Mark, in the Imperial Patent Office at Berlin, and on behalf of the predecessors of the plaintiffs, Glogowski and Son; said Trade-Mark is intended for typewriters and their parts, also for typewriter supplies; the line of business in which the mark is to be used, is said to be "The sale of the aforementioned articles." This Trade-Mark has been assigned to the plaintiff firm.

The defendant carries on at Berlin the sale of American typewriters of the firm, Remington-Sholes Typewriter Co. at Chicago. He himself states, that he carries on such sales as the employe of said concern and on its account. The plaintiff, against this, maintains that he carries on an independent business in his own name. The typewriters of said American concern introduced into commerce by the defendant, are marked with the full name of said concern, this firm's name is likewise printed in the advertisements and price lists of the defendant.

The plaintiff believes that the defendant, in carrying on such business, violates their trademark rights and moved for a judgment, as follows:—

*a*: That the defendant, on pain of fine to be imposed for each case of violation, refrain from placing the word "Remington," either singly or in connection with other words, upon any typewriter, casings or enclosures therefor, and from using such marks in connection with any advertisements, price lists, letters, recommendations, bills and the like.

*b*: That the defendant remove the mark "Remington" from all typewriters, price lists, letters of recommendation and other printed matter in his possession, or in case such removal cannot be effected in any other way, then destroy all typewriters and articles bearing the aforesaid mark.

The defendant raised the objection to the complaint that he is incompetent to be sued, since he does not sell here in his own name, but as the employe of the Remington-Sholes Typewriter Co.

The defendant further replied that he has a right to use, in connection with typewriters consigned by said concern, the business name containing the word "Remington;" that said word is a proper name, and two bearers of this name, Franklin Remington and Carver Remington are associated with and interested in this firm; that they are descendants of the first manufacturer of typewriters, Samuel Remington; that years ago they had associated themselves with Zalmon Sholes in a concern for the manufacture of typewriters under a business name containing the words Remington and Sholes; that this concern has produced a typewriter wholly different from previous constructions; that, for many years, they have been selling these machines all over the world under said business name, and that its right to place such business name upon its machines has never yet been contested.

The defendant moved to dismiss the complaint; maintained that the plaintiff, under Sec. 9 of the law of May 12, 1894, was not properly entitled to the trademark Remington; and filed a cross-complaint and moved, as follows:—

*a*) to decree that the trademark Remington, registered for the plaintiff be cancelled.

*b*) to order the plaintiff to acknowledge that they are not entitled to prohibit the defendant from carrying on the sale of the machines made by the Remington-Sholes Typewriter Co. their casings and enclosures, which are marked with said business name, nor from using said firm name in connection with advertisements or otherwise in the regular course of business.

The "Konigliche Landgericht I," (territorial court) at Berlin, upon Mar. 9, 1897 decided against the defendant in accordance with the complaint, and the cross-complaint was dismissed as unfounded. Upon the appeal of the defendant, the "Konigliche Kammerigericht" (Supreme Court) at Berlin, by the judgment of July 3, 1897, upon which the review is taken, decided that:—

1. the prayer of the plaintiffs was refused.

2. a degree entered against the plaintiffs in accordance with the prayer (*b*) of the cross-complaint; the prayer (*a*) of the cross-complaint was refused; the costs of court were equally divided between the parties, the other costs of the parties were set-off against one another.

In the decision, it is stated, that that prayer of the cross-complaint, which has for its object the cancellation of the trademark registered for the plaintiff, is not well founded, and then continuing:

> "the complaint and the cross-complaint (*b*) are so related, that if the complaint can be sustained, the cross-complaint must be denied and *vice versa.*
>
> "In deciding these matters, we must note that the articles which the defendant sells in this locality, are manufactured by the American concern, Remington-Sholes Typewriter Co. at Chicago. Marked with the name of that concern, they are introduced by the defendant into commerce, and that name may also be found upon the business advertisements of the defendant. The plaintiff believes, that by reason of their trademark rights, they may enjoin the use of that firm name. This position of the plaintiff cannot be regarded as sound, for two reasons.
>
> "First, under Sec's 12 and 20 of the act of May 12, 1894, only such use of a registered trademark can be denied to third persons, as may cause mistakes or confusion about commercial articles; if under the existing facts, such danger is out of the question, there can be no infringement of the trademark. This principle must be particularly adhered

to in the case of a single word used as a trademark. After such a word has been registered, its use in commerce in all cases is not to be condemned, but is only so far improper as it gives rise to the possibility of a mistake or deception. According to this principle, the injunction cannot be granted to the plaintiff in the present case, for their trademark consisting of the single word Remington, can not be confused with the appellation 'Remington-Sholes Typewriter Co.' either by the trade or by the purchasing public, that does not give attention to the particulars of the trademark. This is not an insignificant distinction, one that would have little effect upon the total impression produced by the trade-mark, but a materially different appearance is presented to the eye, barring all danger of mistake.

"In the second place, the defendant to defeat whatever rights the plaintiff may have to an injunction, may properly avail himself of the restriction of Sec. 13 of the act of May 12, 1894.

"The court below refused to permit the defendant, as the general agent of the Remington-Sholes Typewriter Co. at Chicago, to maintain the right to the use of this trade-name. We are unable to sustain the decision. It is immaterial whether the defendant —as he himself alleges—is an employe of said American concern, or—as the plaintiff states—he does business on his own account; in either event, he may use, in Germany, the American trade-name in connection with the goods of the American concern, in which he deals exclusively. In the first place, such trademark protection may be derived from Sec. 23, Subsec. 1, of the act. According to the proclamation of the Chancellor of Sept. 22, 1894 (see Reichsgesetzblatt P. 521) the same protection is granted to German trade-marks in the United States as to American ones; therefore, American concerns, that have not branches here, share, to the full extent, the protection of the law of May 12, 1894. This protection must extend, without discrimination, to all the goods of the American concern offered for sale in Germany, although there is

no branch of said American house here; from this it follows, that American goods which are offered for sale here upon commission or by merchants on their own account, are entitled to the same protection. The protection of the act of May 12, 1894, which is guaranteed by Sec. 23 Subsec. 1, extends likewise to the right mentioned in Sec. 13, to affix the business name and information about the manner and place of production on goods, on their enclosures, and to use the same in the course of business. Accordingly, the defendant, who offers for sale here, the typewriters of the Remington-Sholes Typewriter Co. of Chicago, can not be prohibited from affixing said business name upon the goods of said house nor from using it in the course of business, upon advertisements, etc. It is not open to dispute, that the defendant deals only in typewriters made by said concern, and that he actually obtains his goods from said concern.

"The plaintiffs have tried to establish that the Remington-Sholes Typewriter Co. has unlawfully and surreptitiously appropriated the word Remington. They do not dispute that two descendants of the first typewriter manufacturer Remington, namely, Franklin and Carver Remington, were among the founders of the concern and are still interested in the same, but they claim that both these individuals named, entered into the concern only pro forma, to bestow upon it an apparent right to use their name so well-known in this line of business. However, whatever the plaintiffs have actually shown by way of foundation for their opposition to the use of the name Remington, it can in no way give rise to the conclusion, that in this instance a business name has been surreptitiously appropriated."

From this judgment the plaintiffs have asked for a revision, and move that the same be revoked as far as the appeal of the defendant is concerned, and that the judgment in the first instance be reinstated by rejecting such appeal.

The defendant has moved that the revision be refused.

OPINION.

The revision can have no effect.

The judgment which is attacked gives two substantial reasons for its decision. The first set forth therein, that the danger of a confusion in business of the trademark employed by the defendant is not apparent, when compared with the plaintiff's trademark; the plaintiff is therefore not entitled under Sec's 12 and 20 of the act of May 12, 1894, to enjoin the defendant's use of his trademark.

This reason depends upon a finding of facts which may not be examined in the court of review, and is in itself alone sufficient to support the decision.

In this connection, as a reason for a revision of the judgment, the point is made, that the appellate court only considered, in its decision, the right to use a certain firm name, which right is governed by special principles, while the review itself is only concerned with the protection of trademarks as regulated by the act of May 12, 1894. This presentation is, however, not well founded and is based upon an incorrect understanding of the opinion rendered. In the case at bar, of course, the trademark and the marking of the firm name are in the same category. But the opinion clearly shows, that the trademark as such, and in accordance with the declaration of the act of May 12, 1894, is made the subject-matter of the decision.

After so holding, it is not necessary to consider the second reason given by the appellate court for its decision, not to consider, in this connection the reason given for a revision of the decision.

The burden of the costs of the court of revision is

placed upon the review-plaintiff in accordance with Sec. 98 of the Civil Code.

(Signed) DR. BINGER, WIELANDT, DR. PETERSEN, ROSPATT, FORTSCH, REMELE, PETRY.

Rendered at the public session of the "zweiten Civil-senats des Reighsgerichts," (Supreme Court) upon Mar. 4, 1898.

Signed, SCHRADER,
Clerk of the Court.

Promulgated at Berlin, October 2, 1899.
(L. S.) Subscribed
Clerk of the Court of the
"Landgerichts I, 4. Kammer fur Handelssachen."

BE IT KNOWN, that I certify to the literal agreement of the foregoing copy with the promulgation of the "Koniglichen Landgerichts I," Berlin of October 2, 1899.

BERLIN, Oct. 6, 1899,
(L. S.) RUDOLF MEISSNER,
Notary Public.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA, CITY OF BERLIN, KINGDOM OF PRUSSIA, GERMAN EMPIRE. } ss.

I, Frank H. Mason, Consul-General of the United States of America at Berlin, Germany, do certify that Rudolph Meissner whose signature is subscribed to the foregoing instrument, was, at the time of subscribing the same, Notary Public of the Royal Prussian Court of Justice at Berlin, Empire of Germany, duly commissioned and by law authorized to execute such acts, and that his signature and seal of office affixed thereto are genuine, and as such are entitled to full faith and credit.

WITNESS my signature and seal of office, at Berlin, this 3rd day of January in the year 1901.

FRANK H. MASON,
(L. S.) U. S. Consul-General.

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. 130.

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HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY, PETITIONERS,

*vs.*

WYCKOFF, SEAMANS & BENEDICT, RESPONDENT.

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## MEMORANDUM AND REPLY BRIEF.

A cursory reading of the "Brief of Argument for Complainant-Appellee," discloses errors of statement which make it advisable to file a short memorandum in reply, pointing out some of the errors and stating in shorter form than in the original brief one of the grounds on which we ask a reversal of the decree herein.

We find no justification for the statement on page 4 of Brief of Argument for Complainant-Appellee, as follows:

> "Soon after the Remington-Sholes Company ceased "to use the name 'Remington' in its corporate name "and business, and upon its machines, Franklin Rem-"ington left the employ of that company, and ceased

"to have any active connection therewith, becoming "President and General Manager of the Foundation "& Contracting Company, a corporation under the "laws of the State of New York, and has since mainly, "if not wholly, devoted his time and attention to the "business of the Foundation Company in the City of "New York."

The statement seems improper if it be an attempt to prejudice the Remington-Sholes Company. The statement was made for the first time as a ground for opposing the Remington-Sholes Company's petition for *certiorari,* and was then met fully.

The first italicized quotation on page 178 is put forth as a completed sentence. It is not such in the original. There the clause quoted ends with a *comma,* and is followed by the words *"but it is not to be confused in any way with the latter machine."* (R., 887.)

On page 193 the quotation from Mr. Remington's affidavit is stated as follows:

"4. That my machines manufactured in Chicago "are known here by the name "Remington-Sholes.'"

This, again, is put forth as a completed sentence. In the original the word "Remington-Sholes" is followed by a *comma,* and the words "and should not be confounded with any other machines bearing the name 'Remington.'"

On page 271 is the statement of a list of names which are said to have been used by *"appellants* and their *agents* and *dealers."* The fact is that neither the Remington-Sholes Company, nor any of its agents, used any of the following names: "Remington Imperial," "Remington Typewriters," "New Model Remington," "Genuine Remingtons." None of the other names are objectionable.

The statement in the brief *implies* the use of all the names by *all* members of the class denominated under the description "appellants *and* their *agents and* dealers," and to that extent the statement is misleading and substantially contrary to the stipulation. (R., 662.) Like misleading use of the expression "agents and dealers" is found on p. 186, and upon pp. 4 and 8, and elsewhere in "Complainant-Appellee's Brief on Motion to Suppress Evidence." For a more extended discussion of this matter we would invite the attention of this Court to pp. 128-135 of our main brief.

The important questions are: First, Has the defendant the right to use its corporate name, "The Remington-Sholes Company"? second, Has it the right to designate its machines by its registered trade-mark "Rem-Sho"?

The second question is one of fact peculiar to this case, and the unanimous decision of the Court of Appeals affirming defendant's right to the trade-mark, "Rem-Sho," and the full consideration of this question in defendant's main brief render further discussion unnecessary. The first question is one of wider importance, because it involves the determination for the first time by this court of the extent to which the use of a personal name in connection with a corporate enterprise may be restricted by reason of the prior adoption of such name as a trade-mark.

Every suit like the present is predicated upon two propositions: that complainant has some right to the trade name in question, and that defendant has trespassed upon such right.

What is the measure of complainant's right to the name "Remington" as determined by the decisions of this court? That a personal name is incapable of exclusive appropriation is axiomatic. This court has also said that every one has the same right to the use of his name as he has to the

use of his other property. He may not, however, use it in such manner as to accomplish "a fraud upon another." (*Brown Chemical Company* v. *Myer,* 139 U. S., 540.)

When a name has acquired more or less of a secondary meaning; that is, when it has come to denote the goods of a particular maker, then others who use that name must accompany the use "with such indications as to show that the thing manufactured is the work of the one making it." (*Singer Mfg. Co.* v. *June Mfg. Co.,* 163 U. S., 169.)

The use of a personal name as the whole or part of a corporate name is universally recognized as legitimate, a fact which the court may notice judicially. If this be true, then the use of the personal name Remington in the corporate name, Remington-Sholes Company, brings this case clearly within the language of this court in the case of Brown Chemical Company, *supra,* and it follows that complainant cannot monopolize such use.

This leaves open only the inquiries: (1), As to whether a fraud upon complainant was "manifestly intended" by defendant, and (2), Whether defendant has accompanied its use of the name with such indications as show that its goods are in fact of its own manufacture. If the answer to the second of these questions be in the affirmative, it must necessarily imply a negative answer to the first, because if defendant when using a personal name incapable of exclusive appropriation has marked its machines so as to show clearly that they are of its own manufacture, then this fact disproves the charge that it has attempted to pass them off for those of complainant.

But in this case it is not necessary to rely upon such inference. The testimony of Mr. Sholes, when speaking as a witness for complainant, conclusively shows that there was no fraudulent intent in the adoption of the name

"Remington-Sholes Company." This witness, offered by complainant, was the only one who testified as to the history of the adoption by defendant of the name Remington-Sholes, and his testimony was so direct and true as to render all other unnecessary. Not only does Mr. Sholes say repeatedly (R. 439, 440) that there was no purpose to confuse defendant's with complainant's machines, but the whole history of the Remington-Sholes Company, as given by him, shows that its organization and name occurred in the most natural and usual way and without the slightest taint of fraud.

Mr. Sholes's first machine was, as he says, "invented and made by himself" (R. 399). Mr. Smith and Mrs. Mulliken thereafter contributed money towards exploiting it, but it bore the impress of no personality save that of Mr. Sholes. Naturally, therefore, following a common custom of the typewriter trade, he named this machine after himself, the "Z. G. Sholes," and for like reason named the attempted Wisconsin corporation the "Z. G. Sholes Company." The names of Smith and Mulliken had no family reputation that would prompt their use.

When Z. G. Sholes met Franklin and Carver Remington, in 1893, Franklin Remington abandoned all other business, and devoted his entire time, with Sholes, to the perfecting and exploiting of the machine, and to this end invested fifteen thousand dollars. *This was before any question of the naming of the machine arose.* Their aim was to attain what Mr. Sholes said they did attain, viz.: "the best machine that had ever been built." (R., 429.) The name was of such minor importance that Sholes says he changed it without even consulting the Remingtons at all, and that when they sought to enlist the interest of complainant's president, Mr. Seamans, and the Remington Arms Company, the ma-

chine still bore the name of Mr. Sholes alone. The testimony of Mr. Sholes conclusively shows (R., 404, 413) that the efforts of himself and the Remingtons were directed towards securing financial aid from others for manufacturing "the best machine that had ever been built," and in the negotiations to that end not one word was spoken in regard to the name that would be given to the machine, or to the company to be organized for its manufacture. (R., 417.)

When Mr. Franklin H. Head and Mr. C. N. Fay, of Chicago, became interested early in 1894 with Sholes and the Remingtons, it was evidently the machine that attracted them, for so little attention was paid to the name that, as Mr. Sholes testifies, "there was no discussion about it." (R., 428.) And the only instance that Mr. Sholes is able to give of any expression by Mr. Fay concerning the name, was late in 1895, more than a year and a half after the Remington-Sholes Typewriter Company had been in business. (R., 419.)

Not only do these facts evidence the absence of any attempt to trade unfairly upon the name "Remington," but the testimony of Mr. Sholes makes it plain that the name "Remington-Sholes" was given to the machine by him alone, and without the knowledge of the others, in recognition of the fact that Franklin Remington had devoted his entire time (R., 428) and had furnished the entire capital towards the perfecting and exploiting of the machine. (R., 430, 429.) Complainant's own testimony, therefore, conclusively shows the absence of fraudulent purpose in the adoption of the name.

Upon the organization of the Remington-Sholes Typewriter Company, Franklin Remington at once became its general manager, and Sholes its superintendent, and to them the entire management of the business for the first year

and a half, was entrusted (R., 434). At the outset they were warned by complainant against using in any manner either of their names, and to this warning Franklin Remington (R., 1444) replied, that upon the advice of counsel, they had the right to use their names and that "in using our names, the right to which we have never alienated, we have scrupulously avoided all deception of the public, both in the superficial appearance and the construction of our machine, and in all our printed and verbal representations regarding it."

When the Remington-Sholes Typewriter Company was incorporated, it found complainant's machine colored in the conventional black enamel, common to all other typewriting machines upon the market and known the world over (as the bill of complaint asserts) by the names "Remington Standard," and "Remington." It found such machines invariably marked with the complainant's "Red Seal" trade-mark, and with the words "Remington Standard Typewriter, manufactured by Wyckoff, Seamans & Benedict, Ilion, New York, U. S. A."

It simulated none of these *indicia*. On the contrary, it constructed its machine with a highly ornamental bronzed frame, thus clearly distinguishing it in appearance from all others upon the market. It marked every machine conspicuously with both the name and address: "Remington-Sholes, Chicago." (R., 1101; 1445). To avoid still further the possibility of confusion, it advertised the fact that its machine was "not the Remington Standard." It instructed its salesmen, agents and dealers everywhere to explain to prospective purchasers its entire independence of complainant. It distributed broadcast its catalogues, with the notice: "We state, then, emphatically that this company has no connection whatever with that well known and

excellent machine, the Remington Standard Typewriter." It made its signs, letter-heads and advertising matter totally unlike those of complainant. These were not the acts of one seeking to pass off his wares for those of another.

In the Singer case, where attempt was made to monopolize a personal name, this court condemned the defendant solely because of failure to accompany the machines with "a sufficient notice of their *source of manufacture.*" Certainly, in the case at bar defendant has more than fulfilled the requirements prescribed by this court.

The statement, in the opinion of the Court of Appeals (R., 1522), that the use of the name "Remington" in the corporate name "Remington-Sholes Company," "induces many purchasers to suppose that such machines are the product of the old establishment at Ilion," if true in fact, might indicate that defendant's many precautions had been in vain. Indeed, there would seem to be an inconsistency between the statement that "many purchasers" had been deceived and the court's refusal to grant a decree for an accounting. And it will be noticed, too, that this refusal was had notwithstanding defendant had been *sole* agent for the Remington-Sholes Company for a long period prior to this suit. But the record shows (as fully pointed out in defendant's main brief, pp. 145-154) that notwithstanding complainant had hundreds of agents throughout the country in daily contact with users of typewriters, and the fact that it instructed its agents to report to its main office all matters bearing upon this case, yet it has attempted to prove but three instances of purchasers who took defendant's machines for those of complainant. In two of these instances —the Weingart and Stallwood cases—the parties had full information as to the source of manufacture of defendant's machine, and in the third instance—the Downs sale—the

"Rem-Sho" machine was bought on an order simply for "a machine," given by Downs to one Platt, from whom Downs had before purchased Remington machines, and whom he supposed to be still the agent for complainant.

But apparently it was not this error of fact, nor its erroneous finding, that the early machines were marked simply "Remington-Sholes" (whereas the record shows that they were invariably marked "Remington-Sholes, Chicago" (R., 1445, 1101), that led the majority of the Court of Appeals to decree against defendant, for they recognized that under the decision in the Singer case, whatever might be the inconvenience or loss to complainant, incident to the use by Mr. Remington of his name in his individual business, it was *damnum absque injuria*. They based their opinion upon the broad ground that the giving of the names, Remington and Sholes, to a corporation was in itself a fraudulent act. Notwithstanding the finding, that it was the insufficiency of their own means that led Remington and Sholes to secure additional capital from others, the majority of the court say (R., 1527):

> "They chose not to prosecute the typewriter busi-
> "ness themselves; had they done so, good faith towards
> "those dealing with them might make it necessary to
> "use their names; they chose, on the contrary, to asso-
> "ciate themselves with others in the corporation whose
> "name its organizers were free to select."

This ground is plainly untenable under the decisions of this court. In *Brown Chemical Company* v. *Myer, supra*, it was said: "A man's name is his own property, and he has the same right to its use and employment as he has to any other species of property," and again, in the Singer case it was said that one "need only adopt such precautions

as will protect the property of others and prevent an injury to the public; if by doing so no substantial restriction is imposed on the form of use." Is not the universal custom of giving personal names to corporations conclusive that in giving their names to the corporation organized by them Remington and Sholes were exercising their right to use their names in fair and honest fashion, as they might use "any other species of property?" When the court considers that these young men had produced as the result of their effort and capital what they believed to be "the best machine that had ever been built," was it not natural that they should wish to associate their names with it and with the corporation organized by them for its manufacture? Would it not be "a substantial restriction" to deprive them of such use of their name?

The finding of the Court of Appeals that it was fraudulent for the individuals to bestow their names upon a corporation, while admitting their right to use them in individual or partnership business, is based: First, upon an error of fact, and second, upon a misconception of the authorities on which the court relied. In *Goodyear Rubber Co.* v. *Goodyear Rubber Mfg. Co.*, 128 U. S., 598, 602, this court recognized that in cases like the present the use of the name "company" simply implies that persons have associated themselves together in business. The public accepts no other nor more technical meaning of such word. A corporation, like a partnership, creates its own name, and at will it can make prominent or disguise the name of any of its constituents. There is, therefore, no distinction in fact between the meaning attached to a firm name and the same name incorporated. The authorities, since the leading case of *Meneeley* v. *Meneeley*, 62 N. Y., 427, which has been repeatedly approved by this court, are conclusive

that a partnership is free to employ the names of its members.

In most of the cases relied upon by the Court of Appeals the ground of the injunction and the defendants' wrong consisted not in giving a personal name to a corporation, but in giving to the defendant corporation the whole and very name by which complainants' article was known to the trade. Thus in the Higgins' case complainants' soap was universally known as "Higgins' Soap," and defendant called itself "Higgins Soap Company." In the De Long case complainants' wares were known as "The De Long Hook and Eye," and defendant called itself "The De Long Hook and Eye Company." In the Valentine case complainants' meat juice was known as "Valentine Extract," and defendant called itself "Valentine Extract Company." The following language of Lord Alverstone, M. R., in this Valentine case is instructive:

> "I come to the conclusion that by the use of the "words 'Valentine Extract Company' the defendants "were putting on the market goods which would be "enabled to be passed off as the plaintiff's goods, and "were, in fact, carrying on a trade under a name un- "der which they had no right to carry it on, because I "do not think that a person in the present day could "properly use the words 'Valentine's Extract' in con- "nection with meat juice without passing off his goods "as the goods of the plaintiff."

In the Le Page Glue case cited by the Court of Appeals the decision went off upon the ground of estoppel, a fact that destroys its pertinency in the present instance. In the Garrett Snuff case the court that rendered that decision made plain in a later case (*Proctor & Gamble Co.* v. *Globe Co.*, 92 Fed., 357) that the decision was based upon the

ground that Garrett had no material interest in the defendant company, and had permitted the use of his name for the purpose of confusion in trade. In the Clark Thread case what the court said with respect to the corporate name was *obiter dictum*, as complainant had already consented to defendant's use of its corporate name. In none of the foregoing cases did the defendant employ, with equal prominence, two personal names. Indeed an examination of all the authorities relied upon by complainant will show facts such as above mentioned, which distinguish the cases from the case at bar, or will show equally vital points of difference.

The question recurs: Can the plaintiff sustain its extreme contention that under the proofs Franklin Remington has no right to use his family name as part of the corporate title of a corporation, engaged in the business of making and selling typewriters, and that his right to use his family name in that business is restricted to its use by himself, alone, or as a member of a firm?

In order to sustain its extreme contention, the complainant corporation must establish not only that it had the right to style itself the "Remington Standard Typewriter Manufacturing Company," but having once taken that title, even though later it abandoned the name "Remington" as part of a corporate name, no member of the Remington family thereafter could lawfully use his own name as part of the name of a corporation organized for the purpose of making and selling typewriters, no matter how honest his motives or how great his investment. We may notice that this contention is broader even than the allegation in the bill of complaint in which complainant sets forth its exclusive right to the words "Remington" and "Remington Standard" merely as "trade-names, trade-marks and designations," not of *itself*, but of "its *typewriting machines.*"

A court of equity is neither so powerless as to be unable to prevent unfair trade by individuals, nor so unfair as to hamper fair trade by corporations. In short, a court of equity stands for liberalization of fair trade by individuals and corporations alike, and restrains unfair trade by either. An act of unfair trade is no more or no less unfair, when done by a corporation or by an individual.

If a statute providing for the incorporation of business corporations were to exclude from its operation any person, a member of whose family had used the family name in any manner, either as part of a corporate name, or as designating an article of commerce, the statute could not withstand the objection that it deprived some persons of the equal protection of the laws. Yet the complainant seeks a decree which shall have, in substance, the effect of such a statute. Indeed the Congress, in the Trade-Mark Act (21 Stat. at Large, 502, Sec. 3) expressly prohibits appropriation as a trade-mark of a word which is "merely the name of the applicant."

The complainant's position is substantially as follows: "The Remington Standard Typewriter Manufacturing Co." had the right to use the family name "Remington," and this right was of such a nature that the name, having once been used by it in the business of making and selling typewriters, no other member of the Remington family may ever thereafter use the family name even in conjunction with another name to designate a corporation engaged in the same business, even if the person who uses the family name is the son of the original Remington, has invested time, skill and capital in the business, has supervised improvements in the machine and is, in fact, the general manager of the business. Indeed, if the contention be sound, then no Wyckoff, Seamans, or Benedict may here-

after use his own family name as part of a corporate title in the typewriter business.

There remains the concrete question whether, on the proofs, the corporation "Wyckoff, Seamans & Benedict," of Ilion, New York, is entitled to a decree restraining the corporation "Remington-Sholes Company," of Chicago, Ill., from using its corporate name in the business of making and selling typewriters. This inquiry includes necessarily a comparison of the two names "Wyckoff, Seamans & Benedict" and "Remington-Sholes Company." It appears that in 1892 the members of the partnership "Wyckoff, Seamans & Benedict" incorporated themselves under their former firm name and succeeded to the typewriter business which theretofore had been carried on by several successive corporations. It is not improbable that the individuals, Messrs. Wyckoff, Seamans & Benedict, by incorporating under their own names the typewriter business formerly owned by E. Remington & Sons, sought to attach to their own names some of the prestige which had come to surround the name "Remington," and to substitute their own names for that name in that extensive business. Whatever may have been their motive, we cannot disregard the fact that the manufacturer that now seeks the aid of the court is a corporation, and that its name is "Wyckoff, Seamans & Benedict," of Ilion, New York. This fact may not be conclusive, but it may not properly be *excluded* from the inquiry. Neither can we overlook the fact that in 1894, when the corporation "Remington-Sholes Typewriter Company" was incorporated under that title, there was in existence *no* corporation which bore the name "Remington" as part of its corporate title and which was engaged in the typewriter business. If they who in 1892 incorporated themselves under the title "Wyckoff, Seamans

& Benedict" had the right to incorporate under the title "Remington Company," and we may assume that they had the right, they yet voluntarily and unnecessarily chose to incorporate under the title under which this suit is brought.

When all has been said and all the cases have been considered the mind inevitably comes back to the fundamental proposition established by the decisions of this court, that a man has the right to use his name in every fair way, provided he takes the reasonable precautions that every honest man would naturally take to distinguish his wares from those of his rivals. Defendant asks that its conduct be measured by this test and nothing more.

AUSTEN G. FOX,
GEORGE P. FISHER, JR.,
*Of Counsel.*

EVENING POST JOB PRINTING HOUSE, NEW YORK.

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JAMES H. McKENNE

# Supreme Court of the United States,

OCTOBER TERM, A. D. 1904.

No. 130.

HOWE SCALE COMPANY OF 1886 and FAY-SHOLES COMPANY, *Petitioners,*

vs.

WYCKOFF, SEAMANS & BENEDICT.

Memorandum for defendant Howe Scales Co. of 1886.

In 1886, three partners, Messrs. Wyckoff, Seamans & Benedict, incorporated themselves under their firm name. This corporation now claims the right to prevent the corporation The Remington-Sholes Company from using its corporate name in the business of making and selling typewriters. The Remington-Sholes Company is a duly organized corporation.

From what member of the Remington family did these strangers to the blood and name Remington derive a monopoly of that name? How comes it that the sons of Samuel Remington, the former president of the corporation E. Remington & Sons, have been disinherited of their birthright—the same right that Messrs. Wyckoff, Seamans & Benedict had and exercised; the right to do business in their own names

as partners and to incorporate their own business under their own names?

How is it that a corporate act of the corporation E. Remington & Sons in 1886 could deprive persons who took no part therein of the right to use their own names?

These are plain questions, and they were not answered in oral argument. Even the assignment by E. Remington & Sons to Messrs. Wyckoff, Seamans & Benedict reserved to the corporation E. Remington & Sons the right to re-engage in the typewriter business at the end of ten years. If the corporation E. Remington & Sons *had* re-engaged in that business could it not have transferred its rights to The Remington-Sholes Company? The learned counsel for complainant, in oral argument, answered this question in the affirmative. Therefore, the corporation Wyckoff, Seamans & Benedict has no *exclusive* right to the name "Remington." As Franklin Remington had a substantial interest in the rights which were transferred to the Remington-Sholes Company that would seem to end this controversy.

What is the nature of complainant's right to the name "Remington"? It is the right to insist that, when others use the name, the use shall be accompanied by clear statement of the *source* of manufacture. The statement which defendant puts on its machines is the truth, the whole truth, and nothing but the truth. The same may be said of complainant's statement.

If, however, complainant *encourages* the alleged belief of the public that complainant's machines are *still made* by the Remington family, then to that extent the complainant is trading on what is not the *whole* truth.

If, on the other hand, it is known that the manufacturer is the corporation Wyckoff, Seamans & Benedict, then the defendant's statement "Rem-Sho" Remington & Sholes Co., manufacturers, Chi-

cago, excludes the idea that the manufacturers are Wyckoff, Seamans & Benedict of Ilion, N. Y.

The argument which results in the destruction of the right of Messrs. Remington & Sholes to transfer their business rights to a corporation bearing their name is two-fold.

It is said that the business is the business of the corporation and that in naming a corporation it was *unnecessary* to use their names.

True a corporation is a legal entity, and after incorporation and the transfer of the business, the business belongs to the corporation. But *whose* business rights were they that were transferred?

They were the business rights of Messrs. Remington and Sholes. "In reality it is their business. "But for fiction of law such an association would "be a partnership" (see quotation, p. 70 of Brief for Defendant).

If the argument be sound, based on the idea of necessity, it might be said with equal force that it was unnecessary to incorporate at all, or to form a firm, or to give prominence to the name "Remington" in a firm name. The true test is not necessity, but the reasonable exercise of undoubted right.

If Messrs. Remington and Sholes had formed a firm, would the lawful acts of the firm of yesterday become unlawful to-morrow if they should incorporate to-day as the Remington-Sholes Company?

"The plaintiff can be injured no more in his busi-"ness by a corporation than he can by such a firm" (see quotation, p. 70, Brief for Defendant).

It is said in the opinion of the majority in the court below, "the incorporator who elects to trans-"fer his own name * * * to an artificial person "is taking an affirmative step in the direction of "promoting unnecessary confusion instead of "taking precautions to prevent it." Does this

not beg the question? If Remington & Sholes as partners under that *firm* name are within their rights, how can it be that an incorporation under the *same* name is "an affirmative step in the "direction of promoting unnecessary confusion"?

The Court below said that it was admitted that the choice was "intelligent," and added: "This is enough." Enough for what? Enough to warrant the inference of fraud or trick? Is the choice between intelligent and stupid? Is intelligent action alone to deserve the animadversion of the Court, and stupid choice to command approval?

Since we wrote the foregoing, the "Supplemental Brief for Complainant-Appellee" has been received. It is there said (p. 8):

"The case is not one where a corporation takes "over from an individual an established business "and good-will and the name which identifies to "the public that business. It is a case where a "corporation is formed to inaugurate a new busi-"ness and selects for it a name under which to "begin to introduce itself and the origin of its "goods to the public."

And (p. 27):

"There is no occasion to consider what might "have been the result had Mr. Franklin Remington "and Mr. Sholes formed a partnership. *Perhaps* "*had they done so the business might have been re-*"*garded as their business.*"

Can it be that, forming a partnership and doing some business as the firm of Remington & Sholes was required by the principles of equity as a preliminary ceremony to the right to avail themselves of the statutes of Illinois providing for the incorporation of business corporations? That would be to elevate form above substance. The test whether the business was *their* business is not what they did with it but what they put into it, and Remington & Sholes embarked substantially all they owned.

## As to present status of the parties.

We desire to submit a final word in explanation of the status of this case, to the end that the Court may see that this controversy is indeed a real one and that, aside from the questions of public importance involved, the interests of the Fay-Sholes Company (formerly named the Remington-Sholes Company) are of magnitude.

The following facts appearing from the petition for *certiorari* will not be denied.

The final decree of the Circuit Court, entered in this cause on June 23, 1903, upon the return of the mandate of the Circuit Court of Appeals (see Exhibit "F," p. 71 of petition for *certiorari*), contains the following:

7. And it not appearing that defendant, as such agent, has received any profits, gains and advantages which have arisen or accrued to it from the infringement of the said trade-name and designation "Remington" by using or selling typewriting machines, having thereon the name "Remington" as the name or part of the name of said writing machines, *an account thereof is denied without prejudice to any right of the complainant to recover the same of the principal, the Remington-Sholes Company.*

8. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein perpetually enjoining the defendant, "Howe Scale Co. of 1886," its officers, clerks, attorneys, agents, servants and workmen and all persons acting in privity with it or them, or claiming through or under it or them from in any manner whatsoever making use of the designation "Remington" as the name or part of the name of any typewriting machine whatsoever manufactured by the Remington-Sholes Company, or by defendant or any person or concern, and from selling, offering, exposing or advertising

for sale by means of signs, show-cards, catalogues, circulars, publications, advertisements or by word of mouth, or in any manner whatsoever, typewriting machines manufactured by said Remington-Sholes Company or by defendant, or any person or concern under the name of or as "Remington-Sholes," or by any designation of which the word Remington shall constitute a part.

9. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein perpetually enjoining the said defendant, "Howe Scale Co. of 1886," its officers, clerks, attorneys, agents, servants and workmen, and all persons acting in privity with it or them, or claiming through or under it or them, from in any manner whatsoever making use of the word "Remington" as the whole or as the part of any name or designation whatsoever, which shall be marked upon, or affixed or applied by any means to typewriting machines, manufactured or sold by the said "Remington-Sholes" company, or by defendant, or any person or concern, and used by it or them in connection with the manufacture and sale of its or their writing machines and to distinguish and identify the same.

10. And it is further ordered, adjudged and decreed that the said complainant do recover of the defendant its costs, charges and disbursements in this suit in this Court, to be taxed by the clerk thereof, and that in default of the payment of the same the complainant have execution therefor.

Done in Court this 23d day of June, A. D. 1903, a day in said term.

HOYT H. WHEELER,
Judge.

This decree, as the Court will perceive, is in substance the same as the original decree of the Circuit

Court, modified only by the omission of that part of the original decree that related to the word "Rem-Sho" and the syllable "Rem." On pages 11 and 12 of the petition for *certiorari* are also stated the following facts, which will not be controverted:

"7. Your petitioners further show that the defense of this cause has from its inception been conducted wholly at the expense of your petitioner, Fay-Sholes Company, and by counsel of its own selection; that after the decision of his Honor Judge Wheeler enjoining the use of the name 'Remington-Sholes' and the trade-mark 'Rem-Sho' as aforesaid, and because of said decision your petitioner, Fay-Sholes Company (then bearing the name Remington-Sholes Company), ceased to mark its typewriting machines with the registered trade-mark 'Rem Sho' and with the inscription 'Remington-Sholes Company, Mfrs., Chicago,' and caused its corporate name to be changed from Remington-Sholes Company to Fay-Sholes Company, in keeping with the laws of the State of Illinois.

8. And your petitioner, Fay-Sholes Company, further shows that in October, 1901, complainant, Wyckoff, Seamans & Benedict, filed its bill of complaint in the United States Circuit Court for the Northern District of Illinois against your petitioner, Fay-Sholes Company (at that time still bearing the name Remington-Sholes Company); that said bill of complaint is based mainly upon the alleged infringement and violation by your petitioner, Fay-Sholes Company (while trading under the name Remington-Sholes Company), of complainant's alleged trade-mark 'Remington' by the use by your petitioner, Fay-Sholes Company, upon and in connection with the sale of its typewriting machines of its registered trade-mark 'Rem-Sho' and the inscription 'Remington-Sholes Company, Mfrs., Chicago,' and for alleged unfair trade competition arising chiefly from the use by

your petitioner, Fay-Sholes Company, of its trademark 'Rem-Sho' and of its former corporate name 'Remington-Sholes Company' in connection with the sale of typewriting machines of your petitioner's manufacture. That after the answer of your petitioner, Fay-Sholes Company, was filed to said bill of complaint, an order was entered in said cause staying proceedings therein until the determination of this present cause in the United States Circuit Court of Appeals and in the United States Supreme Court. But in said order so staying said cause it was provided that if this present cause resulted in favor of complainant, Wyckoff, Seamans & Benedict, the said cause in which said order was so entered should proceed at once to an accounting; that said order so entered in said cause is still in force."

In this last mentioned suit, brought by complainant against the Remington-Sholes Company, there was entered on July 1, 1902, the following order, which appears upon page 10 of "Reply brief for Petitioners on Application for Writ of *Certiorari*":

## Order.

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

TUESDAY, July 1, 1902.

Present—Hon. CHRISTIAN C. KOHLSAAT,
*District Judge.*

| | |
|---|---|
| WYCKOFF, SEAMANS and BENEDICT<br>26,032. vs.<br>REMINGTON-SHOLES CO. | In Chancery. |

Now come the parties by their solicitors and now comes on to be heard the motion of the defendants

to stay further proceedings herein until the determination of a suit pending in the United States Circuit Court of Appeals for the Second Circuit. And the Court having considered said motion, **and counsel having stipulated in open court that the questions involved in said cause, pending in the Second Circuit, are in the main like those involved in this case,** it is ordered that further proceedings herein be stayed until the said United States Circuit Court of Appeals for the Second Circuit shall have decided the same, or if appealed or certified, to the Supreme Court of the United States, then such stay of proceedings shall continue until said last named court shall have announced its findings therein; but if said cause shall not be certified or appealed to the Supreme Court of the United States from said Second Circuit, then this stay of proceedings shall cease and terminate with leave to complainant to proceed at once to an accounting, if the finding of said Court shall be in its favor.

NORTHERN DISTRICT OF ILLINOIS, Northern Division, } ss.:

I, MARSHALL E. SAMPSELL, Clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the order entered of record in said court on the first day of July, A. D. 1902, in the cause wherein Wyckoff, Seamans & Benedict is the complainant and Remington-Sholes Company the defendant, as the same appears from the original records of said Court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said district, this 16th day of November, A. D. 1903.

MARSHALL E. SAMPSELL,
Clerk.

[SEAL.]

A consideration of the foregoing facts will show that the suit against the Remington-Sholes Company, now pending in the Circuit Court for the Northern District of Illinois, involved the same vital questions at issue in this cause. And, although temporarily suspended, involves the accounting that was denied "without prejudice," in the present suit against the Howe Scale Company.

The controversy is not only real, but if this court should sustain the sweeping decrees of the lower courts, the controversy may well end in disaster to the defendant.

October Term, 1904.

Respectfully submitted,

AUSTEN G. FOX,
GEORGE P. FISHER, Jr.,
Of Counsel for The Remington-Sholes Company.

# In the Supreme Court of the United States, 1

OCTOBER TERM A. D. 1903.

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WYCKOFF, SEAMANS & BENEDICT,
Petitioner,

*vs.*

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,
Respondents. 2

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## Petition for Writ of Certiorari.

*To the Supreme Court of the United States of America:*

Your petitioner, Wyckoff, Seamans & Benedict, a corporation organized and doing business under and by virtue of the laws of the State of New York, 3 respectfully shows to this Court as follows:

1. That your petitioner, complainant in the suit of Wyckoff, Seamans & Benedict vs. the Howe Scale Company of 1886, is a corporation organized under the laws of the State of New York, with its principal place of business located at Ilion, in said State, and that it is the successor in the typewriter business of two Remington corporations to wit,—E. Remington & Sons and Remington Standard Typewriter Manufacturing Company.

4 2. That the typewriter business of your petitioner's predecessor, E. Remington & Sons, was founded in 1873 at Ilion, N. Y., and was thereafter continuously carried on by said Remington corporations and by your petitioner, and at the time of the filing of the bill of complaint herein your petitioner's writing machines were sold and used in and through the United States and in all foreign countries, and its typewriter business was the largest and most valuable one of its kind in the world.

3. That the machines of your petitioner and its predecessors have, for many years, been marked and generally known and designated as the "Remington" and the "Remington Typewriter," and
5 have been extensively advertised for sale, offered for sale and sold and purchased as such both in the United States and in foreign countries.

4. That the respondent, Fay-Sholes Company, is a corporation under the laws of the State of Illinois, organized in the year 1897, under the name Remington-Sholes Company, for the purpose of manufacturing and selling typewriters, and has designated, advertised, offered for sale and sold its machines as the "Remington-Sholes," and "Rem-Sho" typewriter.

Record, pp. 27, 28, 1256, 1257, 1273.

6 5. That the respondent, Howe Scale Company, is a corporation created by and under the laws of the State of Vermont, and prior to and at the time of the commencement of this suit was the general sales agent for the United States of the corporation, Remington-Sholes Company, and as such had offices in various cities and places in the United States, where it advertised for sale, offered for sale and sold the so-called "Remington-Sholes" or "Rem-Sho" typewriter.

Record, pp. 8, 9, 27, 28.

6. That in or about the month of September, 1898, your petitioner filed its bill of complaint in this

case against the respondent, Howe Scale Company of 1886, in the United States Circuit Court for the district of Vermont, to restrain unfair and fraudulent competition on its part with petitioner in the sale of typewriting machines manufactured by the Remington-Sholes Company. 7

7. That the essential vice of the respondent's acts consisted in the use of the name "Remington" upon typewriting machines, and in connection with the sale thereof. The substance of the prayers of the bill is that the use of the name "Remington," and the abbreviation "Rem-Sho" by the respondent, Howe Scale Company of 1886, as it was employing the same, might be prohibited.

8. That, after the filing of the bill of complaint in said cause, and the filing of an answer in behalf of respondent, Howe Scale Company of 1886, and after replication was filed by your petitioner, and after testimony was taken in the case, the same came on for hearing, and was heard in May, 1901, by the United States Circuit Court for the District of Vermont. That, after taking said cause under advisement, said Circuit Court rendered a decision in favor of your petitioner, and that a copy of the opinion is annexed to the petition for writ of *certiorari* heretofore filed by the respondents herein, and is there marked Exhibit B. Petitioner craves leave to refer to said opinion in connection with this application, and as a part thereof. 8 9

9. That a decree was entered in said action, a copy of which is annexed to respondents said petition, and marked Exhibit C, and that said decree, among other things, enjoined and restrained the respondent, Howe Scale Company of 1886, from making use of the designation "Remington" and the abbreviation "Rem" upon typewriting machines, and in connection with the advertising for sale, offering for sale, and the sale thereof.

10. That, after the entry of said decree by the said Circuit Court, the respondent, Howe Scale Com-

10 pany of 1886, took an appeal to the United States Circuit Court of Appeals for the second circuit, and that said appeal came on for hearing and was heard by said Circuit Court of Appeals on the 7th day of February, 1903, and, after the argument of said appeal, said cause was taken under advisement by said court, which, on or about the 9th day of April, 1903, reversed the decree of the Circuit Court, in so far as the decree of that court had enjoined the respondent, Howe Scale Company, from using the abbreviation "Rem-Sho" upon and in connection with the sale of writing machines; but found and held that the decree of the lower Court was correct in enjoining the respondent,
11 Howe Scale Company of 1886, from using the name "Remington," and remanded the cause, with instructions to decree in favor of petitioner only as to the name Remington, as by reference to the majority opinion of the United States Circuit Court of Appeals of the second circuit, copies of which are annexed to the petition of the respondents hitherto filed in this cause, marked Exhibit D, and also the decree of the court entered thereon, marked Exhibit F, will more fully and at large appear.

11. Your petitioner further represents that the proofs in this case establish that the abbreviation "Rem" was frequently used and employed as a designation for your petitioner's writing machines,
12 and was a well understood abbreviation of petitioner's trade name "Remington" long prior to the organization of the Remington-Sholes Typewriter Company and the Remington-Sholes Company.

Record, pp. 272-275, 135, 275-278, 1426, 190, 206, 207.

12. Your petitioner further shows that the abbreviation "Rem-Sho" is first alleged to have been used by the Remington-Sholes Typewriter Company in or about August, 1895, as a telegraphic code address, and that such use was continued until July, 1897, after which time it is alleged to have been

used in connection with the manufacture and sale of the writing machines of the Remington-Sholes Company. 13

Record, pp. 1352, 1353, 1486.

13. Your petitioner is informed and believes that the term "Rem-Sho" was used merely as an abbreviation of the hyphenated name "Remington-Sholes," and was so understood by the public and by purchasers and users of typewriting machines.

Record, pp. 524, 530. 564, 596, 1,044, 1,448, 1,117, 1,124, 1,183, 1,225, 1,236, 1,257, 1,258.

14. Your petitioner, upon information and belief, further represents that the Circuit Court of Appeals erred in finding and holding that the abbreviation "Rem-Sho" was an arbitrary name and not sufficiently like "Remington" to be by itself a reasonable cause of confusion, inasmuch as the proofs show that it is not an arbitrary name, but that "Rem" was a long used and thoroughly understood abbreviation of the name "Remington," and the designation "Rem-Sho" was generally understood in the trade and by the public to be merely an abbreviation of the hyphenated name Remington-Sholes. 14

15. And your petitioner avers that the present application is one in which it is proper for this Court to issue a writ of *certiorari*, and, among others, for the following reasons: 15

(a) Because there is a conflict of decision between the Circuit Court for the District of Vermont and the Circuit Court of Appeals for the second circuit in respect of the abbreviated name "Rem-Sho."

(b) Because whether the respondent, Remington-Sholes Company, invaded any right of this petitioner by the use of the abbreviation "Rem-Sho" upon typewriting machines and in the sale thereof is still undetermined in the case pending in the

16 United States Circuit Court for the Northern District of Illinois, wherein your petitioner is complainant and the Remington-Sholes Company defendant, and a full consideration of this case by this Honorable Court will tend to prevent costly and undesirable litigation and settle all questions in controversy between the parties to this action.

(c) Because this Court having already granted respondents motion for a writ of *certiorari* the whole record and proceedings of the courts below will be before it at the hearing of this case, and that little if any additional labor will be imposed upon this Honorable Court if it shall grant this application, hear the whole case and thereby promote justice to
17 all interested therein.

(d) Because the Court of Appeals erred in holding that the short name "Rem-Sho" was not sufficiently like "Remington" to be likely to cause confusion for the reason that the abbreviated or short name "Rem-Sho" had theretofore always been used in connection with the hyphenated name "Remington-Sholes," and to use the abbreviation "Rem-Sho" is to all intents and purposes to use the longer name "Remington-Sholes."

Wherefore, in view of the premises, petitioner prays that this honorable court will grant its writ of *certiorari* directed to the Circuit Court of Appeals
18 for the Second Circuit requiring that the records of said case in said court and its decree be certified to this court, and that this honorable court will thereupon proceed to correct the error complained of, and give to your petitioner such other and further relief as the nature of the case may require and to the court may seem proper in the premises.

WYCKOFF, SEAMANS & BENEDICT,
By J. F. McCLAIN,
Secretary.

EDMUND WETMORE,
HENRY D. DONNELLY,
of Counsel for Petitioner.

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UNITED STATES OF AMERICA,
STATE OF NEW YORK,
Southern District of New York. } ss.

JOHN F. MCCLAIN, being first duly sworn, says that he is the secretary of the above named petitioner, Wyckoff, Seamans & Benedict, and as such secretary has full knowledge of its business affairs and particular knowledge of the matters and things set forth in the above petition and of the conduct of the proceedings in the above entitled action, that he has read the foregoing petition subscribed by him and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

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J. F. MCCLAIN.

Subscribed and sworn to before me this 11th day of December, 1903.

H. C. COLEMAN,
Notary Public, Kings Co., N. Y.
Certificate filed in N. Y. Co.

Notary's Seal.

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# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM A.D. 1903.

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JAMES H. McKENNEY,
Clerk

HOWE SCALE COMPANY OF 1886
AND FAY-SHOLES COMPANY,
*Petitioners,*

*vs.*

WYCKOFF, SEAMANS & BENEDICT,
*Respondent.*

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# BRIEF FOR RESPONDENT ON APPLICATION FOR WRIT OF CERTIORARI.

EDMUND WETMORE,
HENRY D. DONNELLY,
*Attorneys and of Counsel for Respondent.*

PRESS OF
A. H. KELLOGG, NEW YORK

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

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HOWE SCALE COMPANY of 1886 and FAY SHOLES COMPANY,
Petitioners,

*vs.*

WYCKOFF, SEAMANS & BENEDICT,
Respondent.

**Brief for Respondent.**

## Statement of Case.

This petition is filed in a case in which the respondent to the said petition is the *complainant* and the petitioners are the *defendant*

The gravamen of the bill is *fraud* and unfair competition in business. The allegations therein in respect to the registration of the name "Remington" as a trade-mark may be regarded as a matter of inducement to the charge of fraud.

> Putnam Nail Co., *vs.* Bennett 43, Fed. Rep., 800. Cited with approval by this Court in Lawrence Mfg. Co. *vs.* Tennessee Mfg. Co., 138 U. S., 549, 555.

The Petitioner Howe Scale Company of 1886, was, at the date of the filing of the bill, the general sales

agent in the United States of an Illinois corporation, known as the Remington-Sholes Company and was actively engaged in introducing, commending and advertising and in many ways offering for sale and selling the typewriting machines complained of.

The machines were made by the Illinois Corporation above named, whose factory was located at Chicago.

In its answer and otherwise, the Howe Scale Company, justifies by virtue of what it alleges to be the right of the Remington-Sholes Company, and fully identifies itself with that company.

The chief postulate of the bill and the case is that Respondent's product—typewriting machines—has for many years been known in the market and to the trade and public and referred to, identified, offered for sale and sold as the "Remington" typewriter, and that Respondent and its business had been known to and designated by the public as the "Remington Company" and the "Remington Typewriter Company." The defendant is charged with having *malo animo* inaugurated an inequitable and unfair competition in that it had for that purpose made use of a simulated corporate name, Remington-Sholes Co., and the designations "Remington-Sholes" and "Rem-Sho" in advertising for sale, offering for sale, and selling such machines in the manner alleged in the bill.

The essential vice of the Petitioner's acts consisted in the adoption and use of the name "Remington" in the corporate name, Remington-Sholes Co., and as a designation or a part of a designation for Petitioners machines, and in advertising *media*, etc. The substance of the prayer of the bill is that the use of the name "Remington" and the abbreviation "Rem-Sho" by the Petitioner, Howe Scale Co., as it is employed may be prohibited.

The courts below in their decisions recognize the right of Respondent, as against the Petitioner, Howe Scale Co., to the exclusive use of the name "Remington."

Shortly after the decree was made and entered in the Circuit Court, the Remington-Sholes Co., eliminated the word "Remington" from its corporate name, machines and advertising *media*, discontinued the use of the abbreviation "Rem" and substituted the name "Fay" who was the chief promotor and stockholder and president of that company, in all connections in which the name "Remington" had theretofore been used. Shortly after the Remington-Sholes Co., ceased to use the name "Remington" in its corporate name and business and upon its machines, Franklin Remington left the employ of that company, and became President and General Manager of the Foundation & Contracting Co., a corporation under the laws of the State of New York, and has since devoted his time and attention to the business of the Foundation Co. in the City of New York.

## Statement of Facts.

The Respondent is a corporation created by the laws of the State of New York in 1892, and is the successor in the typewriter business and the good will thereof of two Remington corporations—E. Remington & Sons and Remington Standard Typewriter Manufacturing Company.

R. pp. 768–780.

The elder predecessor and the founder of Respondent's typewriter business was E. Remington & Sons Corporation, created in 1865, under the laws of New York, for the manufacture and sale of fire arms, etc.

R. pp. 663–665.

From that time until 1886, said corporation was largely engaged in the manufacture of guns, and during a portion of the time manufactured and sold

sewing machines, typewriting machines and agricultural implements.

R. p. 39.

The typewriter business of E. Remington & Sons Corporation was established in 1873, and was continued at its works at Ilion, N. Y., until 1886, when that branch of its business was sold and transferred to the predecessor of Respondent as hereinafter set forth. E. Remington & Sons were *pioneer* typewriter manufacturers.

R. pp. 39, 43–46, 61, 62, 716, 101.

The first typewriter which they manufactured was an upper case or capital letter machine, and was known and designated as the "Sholes-Glidden" typewriter, Sholes, Glidden and others being the inventors of the improvements embodied in the first model, which was brought to the works of E. Remington & Sons at Ilion, N. Y., in February, 1873.

R. pp. 91, 92, 55, 42.

After the model was brought to Ilion, and before the machines were put upon the market many improvements were made therein by the Superintendent and skilled mechanics of Remington corporation.

R. pp. 43, 45, 101, 102.

Subsequently and about 1877, another style of machine was constructed and put upon the market by E. Remington & Sons, which was provided with both upper and lower case characters.

R. pp. 46, 91, 93.

This latter machine became known as the Remington No. 2, the upper case machine thereafter being known as the Remington No. 1.

R. p. 93.

After the No. 2 machine came on the market the demand for the No. 1 gradually fell off, and the

manufacture of that style of machine was practically discontinued about 1884.

R. pp. 93, 94, 46.

Prior to 1882, the machines manufactured by E. Remington & Sons were sold through various agencies in the United States and to some extent in Europe.

R. p. 52.

In 1882, the firm of Wyckoff, Seamans & Benedict became the *exclusive* agent for the sale of the Remington machines, and from that time until March, 1886, they took the whole typewriter output of E. Remington & Sons works, and sold the same throughout the United States, and in many foreign countries. The typewriter business of E. Remington & Sons, was a constantly growing one and was carried on without interruption from 1873 until 1886, and during that time many thousand machines were manufactured and sold.

R. pp. 52, 53, 45.

For the first year or two, after E. Remington & Sons began the manufacture of typewriters, their machines were marked and designated as the "Sholes & Glidden" and were known by that name as "The Typewriter."

R. pp. 91, 190.

Subsequently and about 1875, the name Sholes & Glidden was left off the machines altogether, and from that time forth they were generally known as the Remington machine and the Remington typewriter.

R. pp. 91, 92, 64, 65.

As early as the year 1880, the machines were marked with and bore the name "Remington," which was then and afterwards placed conspicuously on the paper-table of the machine, and was also

stamped on the machine in connection with other words such as perfected and standard and the name of the manufacturer.

R. p. 791.

In March, 1886, E. Remington & Sons sold their entire typewriter business to Wyckoff, Seamans & Benedict, said sale and assignment covering all rights, privileges, franchises, licenses, patents, trade-marks and trade-names under which the machines had theretofore been manufactured, and all special tools, machinery, patterns, models, raw material, and material in process of manufacture. Wyckoff, Seamans & Benedict also took a lease of that portion of the factory works where the typewriter business had theretofore been carried on, and employed the skilled workmen who had theretofore been engaged in the manufacture of the machines.

R. pp. 716–722, 725, 728.

Wyckoff, Seamans & Benedict continued the business temporarily, and until April 1886, when a corporation was formed under the laws of the State of New York, known as the Standard Typewriter Manufacturing Co., and afterwards as the Remington Standard Typewriter Manufacturing Co., which corporation took over all the property, rights, franchises and interests theretofore acquired of E. Remington & Sons, by said firm, and the same business of manufacturing typewriting machines was thereafter continued by said corporation until 1892. Shortly after the sale and transfer of its typewriter business to Wyckoff, Seamans & Benedict, E. Remington & Sons corporation became insolvent and was dissolved.

R. pp. 730, 735, 772–776.

From 1886 until 1892, the sale of the machines was continued through the agencies of the firm of Wyckoff, Seamans & Benedict, they taking the

whole typewriter product of the Remington factory. During this period the quality of the machines was improved, the sales were largely increased, and to meet the demands of a constantly growing business other and enlarged works were secured near the old plant.

R. pp. 74, 75, 76, 79, 96, 97.

The machines were extensively advertised and sold both in the United States and in foreign countries, and became generally known in the trade and to the public as the Remington typewriter, the different models and styles of the machines being known as the Remington No. 1, 2, 3, 4, 5, 6, etc.

R. pp. 97, 98, 95, 211.

In 1892 a corporation was formed under the laws of the State of New York, known as the Standard Typewriter Co. which purchased and took over all the property and assets of the firm of Wyckoff, Seamans & Benedict, and this corporation was subsequently consolidated with the Remington Standard Typewriter Manufacturing Co., forming the respondent corporation, Wyckoff, Seamans & Benedict, which succeeded to all the rights, property, franchises, etc. of every name and nature theretofore owned by its predecessors and succeeded to the business including the good will thereof, theretofore carried on by its predecessors.

R. pp. 734–752.

Prior to and since 1892, many thousand machines were and have been annually manufactured and sold in all parts of the civilized world and the machine had prior to 1892, become generally and widely known to the trade and to the public and to purchasers and users thereof as the "Remington" typewriter.

R. pp. 92, 95, 75, 76, 64, 120, 141, 158, 166, 190, 203, 207, 273, 274, 320, 321.

Up to May 1st, 1899, respondent had expended more than a million dollars in advertising its ma-

chines and making them known to the public in all parts of the civilized world as the "Remington" typewriter. Large sums were also expended by dealers and outside representatives who sold the machines.

R. p. 212.

That respondent's business and machines had acquired a world-wide reputation when the Remington-Sholes Typewriter Co., was projected and organized was a conceded fact in the Courts below. The Petitioners counsel both in their brief and in oral argument admitted that "when the Remington-Sholes Co. and its predecessor entered the field Complainant had a world-wide reputation." Obviously that reputation was acquired in the manufacture and sale of the Remington typewriter, as that was the only business that Respondent carried on.

The Circuit Court speaking through Judge Wheeler, among other things, said: "The intricate and delicate machinery of typewriters requires good materials and nice workmanship, and their reputation depends largely upon the quality of their manufacture. The Remington typewriter was among the pioneers, and one of the foremost in reputation for good construction. That the introduction to the markets of another machine with that name upon it, at the time when the Remington-Sholes machine appeared, would make confusion in the plaintiff's trade, and tend to pass off the new machines for the regular Remington machines of the plaintiff needs no proof but the circumstances; *that it actually did have that effect well appears from the evidence.*"

Pet. p. 49.

The Circuit Court of Appeals speaking by Judge Lacombe said: "It is not disputed here that the firm and the corporation of E. Remington & Sons acquired a high and well deserved reputation for

careful workmanship in every branch of manufacture which it undertook, nor is it disputed that the typewriting machines which the corporation and its successors have continuously manufactured at Ilion, are most favorably known to the public and associated in the public mind with the name "Remington" so that the ordinary purchaser is quite likely to assume that a machine offered to him for sale as a "Remington" has come from the establishment founded by the Remingtons at Ilion, nearly half a century ago. To this manufacture and trade complainant succeeded in 1886; it thereupon became entitled to conduct the business of manufacturing machines and selling them as Remington machines, and would have the right to invoke the aid of a Court of Equity to restrain another trader from any action which would be calculated unnecessarily to confuse the goods of his own make with those of Complainant."

Pet. p. 58.

The proofs in the case establish:—

1. That prior to 1894 the only Remingtons who had been engaged in the manufacture or sale of typewriting machines were Respondent's predecessors, and their writing machines were not only the first practical typewriters given to the world, but were the only writing machines that were ever known as or designated by the word "Remington," or bore that name, until the so-called Remington-Sholes Typewriter was put upon the market.

2. That prior to the year 1894, and before the organization of the "Remington-Sholes Typewriter Co.," "Remington Company," "Remington Typewriter Co.," etc., in the mind of the public meant the Complainant and its business.

3. That the typewriting machines manufactured and sold by Respondent and its predecessors had for many years been known to the trade and purchasers and users of writing machines as the Rem-

ington Typewriter, and had been so designated, offered for sale, and bought and sold, and that the name "Remington" had come to denote Respondent's product in the mind of the public.

R., pp. 64, 75, 92, 120, 141, 148-165, 166, 190, 201-204, 272-275, 275-278, 283, 288, 289, 329-336, 336, 337, 493, 607-610, 235, 236.

## GENESIS OF THE PETITIONERS AND OF THE REMINGTON-SHOLES MACHINES.

The *nominal* defendant in this case is the Howe Scale Company, a corporation organized under the laws of the State of Vermont in the year 1886, and which, since that time, has, principally, been engaged in the manufacture and sale of scales, etc. In or about the year 1897, it became the general sales agent of the Remington-Sholes Co. in and for the United States, and sold the so-called "Remington-Sholes" typewriters, or "Rem-Sho" typewriters through its various agencies and offices in this country. Shortly before the hearing of this case by the Circuit Court, it discontinued the sale of the "Remington-Sholes" typewriter, and has not since been in the typewriter business. The *real* defendant in this case is the Remington-Sholes Co., now the Fay-Sholes Company, which assumed, conducted and paid for the defense of this suit against its agent the Howe Scale Co.

R., pp. 16, 8, 27, 28, 1,358.

THE HISTORY OF THE REMINGTON-SHOLES CO. AND THAT OF ITS PREDECESSORS, PROMOTORS AND CORPORATORS IS SUBSTANTIALLY AS FOLLOWS:

In or about the year 1892, one Zalmon G. Sholes, whose father, C. Latham Sholes, had made some inventions, which were with those of other persons embodied in the earlier forms of the Remington

typewriter, made a model typewriting machine, which he designated as and marked "The Z. G. Sholes." It was a working model. This model was destroyed by fire and another one was subsequently constructed, on the same general lines, in the Winter of 1892-93. After Z. G. Sholes built the first model, other persons became pecuniarily interested in it, and in his applications for patents relating to certain specific features embodied in it. In or about April, 1893, Sholes and his associates organized a corporation under the laws of the State of Wisconsin under the name and style of "The Z. G. Sholes Co." The purpose of organizing this Company was to manufacture and sell typewriting machines similar in structure to "The Z. G. Sholes" model. Both the model and the Company bore the name of Sholes the inventor of the novel features in the machine, but it was not deemed necessary to associate his name with that of any of his associates, although they held a large majority of the capital stock of The Z. G. Sholes Company.

R., pp. 390, 391, 392, 397.

The Z. G. Sholes Co., purchased and installed machinery in its shop with which to manufacture tools to build machines like "The Z. G. Sholes" model, but after starting on the tools, and running for a few months, Sholes' associates decided that they would not proceed further in this new enterprise, and their interests in "The Z. G. Sholes model" and "The Z. G. Sholes Co." were sold to Carver and Franklin Remington in August, 1893.

R. 400, 401, 402, 403.

These two Remingtons were the sons of one Samuel Remington, who at one time had been connected with and held an official position in the corporation, E. Remington & Sons. At the time they purchased an interest in The Z. G. Sholes model and Company, they were associated together in the con-

tracting business in the City of Chicago, and were then engaged in excavating a portion of the drainage canal in that city. At the time of purchase and prior thereto, neither of them had been engaged in the manufacture or sale of typewriting machines, and had no knowledge of or skill in the typewriter business. The proofs also show that Z. G. Sholes then had little or no practical knowledge of typewriter manufacture.

R. pp. 56–59, 412, 447.

After the Remingtons became associated with Sholes in the ownership of the model and the stock of The Z. G. Sholes Co., and in the Fall of 1893, they in company with Sholes, came east and endeavored to sell the model and the alleged inventions therein embodied to respondent and also to the Remington Arms Co., of Ilion. The evidence in the case shows that at the time the Remingtons acquired their interest in The Z. G. Sholes model, they had no idea of personally engaging in typewriter manufacture. Their purpose was to create a stir at Ilion, and dispose of their interests, either to the respondent or to the so-called Remington Arms Co., which concern was not then and never has been engaged in typewriting manufacture.

R. 404, 405, 414, 415.

During the period that the model was being exhibited to the public at Ilion, and elsewhere, it bore the name "The Z. G. Sholes." Failing in their efforts to dispose of the model and alleged inventions therein, either to the Remington Arms Co. or to respondent, the Remingtons and Sholes returned to Chicago, and after their return conceived the idea of organizing a corporation to manufacture and sell typewriters embodying the features of construction shown and illustrated in "The Z. G. Sholes" model. Some time in November, 1893, the name of the model was changed to "Remington-Sholes." Sholes

testified that the name was changed because it was thought that the name "Remington" would be a valuable addition to his name inasmuch as that name had been used in connection with respondent's business and machine.

R. pp. 417, 418, 425, 426.

Prior to the organization of the Remington-Sholes Typewriter Co., the Remingtons had expended about $8,000 or $9,000 in purchasing the interests of Sholes' associates in "The Z. G. Sholes" model and in the stock of "The Z. G. Sholes Co." In addition to this sum, it is alleged that they paid out and expended for salary to Sholes, wages of a mechanic, who made some slight changes in the model, for traveling expenses, hotel bills, etc., while endeavoring to interest capitalists in the model machine, some shop-rent, attorney fees, etc., $6,000 or $7,000 more, making a total expenditure of about $15,000.

R. pp. 412, 413, 430.

Sholes says that at the time the name of the machine was actually changed, he did not consult the Remingtons, but it is clearly manifest that the Remingtons knew a change of name was to be made and they subsequently ratified the change and accepted the fruits thereof. The allegation in the brief of petitioners that at the time the name of the model was changed, Sholes and the Remingtons had labored together for many months and had reconstructed the machine is incorrect, as the proofs show that the Remingtons did not acquire their interest in the model until about the 26th day of August, 1893, and the name was changed some time in November 1893, and shortly after they returned from the eastern trip. The labor alleged to have been performed by them consisted principally in their journey to Ilion, etc., to sell the model as heretofore stated and covered a period of two or three months. During that time and prior to the organization of the Remington-Sholes

Typewriter Co. the model machine was not "*reconstructed*" as the proofs show that no material changes were made therein. Prior to the time of the organization of the Remington-Sholes Typewriter Co. no machine was built by The Z. G. Sholes Co. and none was ever constructed by the Remingtons and none by Sholes except the model machine destroyed by fire and the model constructed by him which furnished a basis for the organization of the Remington-Sholes Typewriter Co.

Furthermore the Petitioners say in their brief, when referring to the Z. G. Sholes Co. that "No machine was ever made or sold by it."

R., pp. 427, 825, 826, 417, 419, 414, 416, 405, 400, 401, 390.

The Circuit Court of Appeals speaking by Judge Lacombe said: "In November 1893 the name of the machine was changed from "The Z. G. Sholes," to "Remington-Sholes," that is to say the name on the model was changed and the parties interested began to talk of the machine as the "Remington-Sholes," but no such machine had apparently been manufactured and offered for sale."

Pet. p. 60.

And again the learned Judge observed "some suggestion had been made that the machines existed before the incorporation; that they were produced by the Remingtons and Sholes individually at the time when the Remingtons had gone into the typewriting business with Sholes on their own account and had the right to sell all their goods under their own name. The record is very voluminous and we may have overlooked some item of proof, but a careful examination of it does not sustain this proposition. Prior to the formation of the Remington-Sholes Typewriter Co. no machines had been sold or offered for sale. Two or more (two) had been made as models and the name on them was changed from "The Z. G. Sholes" to "Remington-

Sholes," but the new name had not become associated with the machine except in the talk of the future corporators among themselves; the public knew nothing of any such name in connection with a typewriter, indeed did not know the junior Remingtons or even Sholes as a producer of typewriters.

Pet., pp. 63, 64.

There was no existing or going business prior to or at the time of the organization of the Remington-Sholes Typewriter Co. nor was there any good will of such business theretofore established or carried on by Sholes and the Remingtons or by either of them.

Pet. Brief, p. 4.

About six months after the Remingtons acquired their interest in The Z. G. Sholes model and The Z. G. Sholes Co. and shortly after the name of the model machine had been changed, Sholes and the Remingtons secured the services and the financial aid of two large Chicago capitalists, Charles Norman Fay, and Franklin H. Head, who afterwards became the principal stockholders of the Remington-Sholes Typewriter Co. Fay was the chief promotor of the enterprise and in May 1894, caused a corporation to be organized under the laws of the State of Illinois, under the name and style of Remington-Sholes Typewriter Co. For the purpose of organizing the corporation its capital stock was fixed at $150,000, that is 1500 shares of stock of the par value of $100 per share. In order to make the stock full paid it was issued to Sholes and the two Remingtons, in payment for the model, etc., which they transferred to the Company. No cash was actually paid for any of the stock subscribed for by Sholes or the Remingtons. After the stock was issued, Sholes and the Remingtons turned over to Fay, the chief promotor, one-third part of it to-wit, 500 shares of the par value of $50,000.

Shortly after the organization of the Company, the capital stock was increased to $250,000. The additional stock was taken by Fay, Head and others for the purpose of furnishing working capital for the Company. That a majority of the stock and the control of the Company passed into the hands of Fay, Head and others after the Company was organized is manifest from the certificate filed by the Company in 1896, wherein it appears that Fay and other persons than the Remingtons held a large majority of the stock of the Company.

R., pp. 406, 410, 418, 421, 422, 835, 841.

Counsel for Petitioners admitted in their brief and in oral argument in the Courts below that "doubtless Mr. Head and Mr. Fay (Corporators) also agreed with Mr. Sholes that the name "Remington-Sholes" was a "good combination". It offered a talking point for that machine."

Counsel also conceded in argument in the Courts below that the choice of the name "Remington-Sholes" and "Remington-Sholes Typewriter Co." and "Remington-Sholes Co." was an intelligent one. That in choosing the name "Remington", the corporators fully understood the value of that name in connection with the so-called "Remington-Sholes" machine and the "new born" Remington-Sholes Typewriter Co. is shown in the record wherein it appears that Fay attached great value to the name. Shortly after the corporation was organized and before any machine had been made, advertised, offered for sale, or sold, and before the Company had obtained any business or possessed any good will in any typewriter business, Fay expressed the opinion that the name Remington would be of great assistance in selling the new machine.

Record p. 447, Pet. pp. 64, 65.

Moreover in the Fall of 1895, and after the machine had been manufactured and sold for several months, Fay ragarded the machine as of very little value

and remarked to Sholes that "the only value he attached to it was the name 'Remington-Sholes.'"

R. p. 419.

The Remington-Sholes Typewriter Co. constructed its machine substantially on the lines of "The Z. G. Sholes" model, making only minor changes and alterations therein in preparing the machine for the market. The first machine according to Sholes' testimony was sold in or about December, 1894, but one of Petitioners' witnesses testified that according to his recollection, the first machines were shipped from the factory about April, 1895

Record, pp. 410, 411, 1110.

After the Remington-Sholes Typewriter Co had manufactured and sold several hundred machines, it became financially embarrassed and it was necessary to reorganize the business, and to that end its property and assets were sold and purchased by Fay as Trustee for the benefit of the stockholders of the old Company. He subsequently transferred the property of the old concern to the Remington-Sholes Co., which was organized in or about April, 1897.

R. pp. 410, 411, 422, 835–842, 1355, 1356.

The Remington-Sholes Co. organized in April 1897, but which was but a reorganization of the old concern, was unsuccessful under the management of Franklin Remington and Sholes, both of whom were *tyros* in the typewriter business. Some time previous to the failure and reorganization of the old Company, Fay took the management largely into his own hands, organizing the new Company, he giving the old stockholders an interest therein equal to their stock holdings in the old concern.

R. pp. 839, 843–847, 412, 410, 411, 419, 1356.

The capital stock of the new or reorganized Company was fixed at $300,000, that is to say 3,000

shares of stock of the par value of $100 each. In the new allotment of shares of stock Franklin Remington was given 150 shares of the *common* stock. That is to say he had one twentieth part of the stock of the Company. Neither Carver Remington nor Sholes had any interest or connection with the reorganized Company. Carver Remington's connection with the Remington-Sholes Typewriter Company was only nominal.

R. pp. 843, 1356, 567, 410, 411, 412, 422, 882, 883, 884, 893, 896, 900, 908.

The proofs in this case show that the machines of the Petitioners manufactured by the Remington-Sholes Typewriter Co., and by Fay and the Remington-Sholes Co. always bore the name "Remington-Sholes," and that those designations were used in catalogues and advertising *media*.

R., pp. 24, 27, 1103, 1109.

After about July 1st, 1897, the name "Remington-Sholes" was abbreviated to "Rem-Sho," which had theretofore been employed as a telegraphic code address. It was placed upon the machines and used in advertising *media*, but such abbreviation was always intimately and inseparably associated and used with the words "Remington-Sholes" in the corporate name "Remington-Sholes Co." The proofs establish that the name "Rem-Sho" was known and understood in the trade and among purchasers and users of typewriting machines to be merely an abbreviation of the name "Remington-Sholes;" that Petitioners and their agents and dealers continued to designate and advertise their machines for sale, and offer them for sale, and sell them as "Remington-Sholes" typewriters. The designation "Remington-Sholes" was continuously used in catalogues, and was employed upon signs, and the machines were always so designated and sold in foreign countries. The Petitioner, Howe Scale Company, admitted in its answer in this case

that it had advertised the machine as "Remington-Sholes" typewriters.

R., pp. 27, 1353, 1486, 1044, 1081, 1006, 1027, 1124, 1134, 1236, 1252, 1256, 1258, 1273, 1460, 1464, 524, 530, 864, 882 900.

During the progress of this suit, the Remington-Sholes Co. changed the design and finish of its machine, enamelling the frames in plain black instead of a bronze finish which they first used, and designated said machine as the Rem-Sho—Remington-Sholes No. 6, and in that respect made the design and finish of their machines more nearly like Respondent's. Respondent's machines that were most largely sold and used in this country then were and now are designated "Remington Typewriter No. 6."

R., pp. 555-6, 545.

The evidence shows that purchasers of typewriting machines are ordinarily of that class who are unacquainted with the mechanical construction of the machines; that it is the exception that purchaser possesses any information in detail of the typewriter, and that it is the rule in the larger cities that the business man does not even examine the machine which he purchases, and that very few buyers are operators. The purchaser relies mainly upon the trade-name or designation of the machine and its repute in the market.

R., pp. 543-545, 549, 594, 601, 602, 606.

The proofs also show that the only instances and connections in which the Remington-Sholes Typewriter Co. or the Remington-Sholes Co. ever gave any alleged cautionary notices to the public were that for a short while the Remington-Sholes Typewriter Co. displayed the words "Not the Remington Standard" upon the window of its *Chicago* office, and caused the same words to be printed in the *Chicago* business directory in the year 1894. There is no evidence showing that the advertise-

ment in the Chicago Directory was continued after the year 1894, and the evidence does show that no Remington-Sholes machines were put upon the market at a date earlier than December, 1894.

R., pp. 1445, 1455, 439.

The Remington-Sholes Typewriter Co. afterwards removed its office from Monroe Street, in Chicago, to another location in that city, and it does not appear that after such removal those words were used upon its signs in Chicago or anywhere else. They were never used upon the machine or on the packing cases containing the same.

R., pp. 483, 484.

An alleged cautionary notice was also printed in their catalogues containing about 25 pages of printed matter, the same being printed near the end of the catalogue. This notice like the one on the office window was ambiguous, and referred to a machine which Petitioners designated as the "Remington Standard." The notice did not refer to Respondent itself or disclaim any connection with the old Remington establishment whose successor Respondent was and is. These are the only instances in which they gave printed cautionary notices.

On the back side of the title page of many of the catalogues published and circulated, the Petitioners printed in large capital letters the words "THE ONLY MACHINE NOW MADE BY A REMINGTON."

If the catalogue did reach a purchaser it was more likely to mislead than to enlighten him.

While most of these catalogues were placed in the hands of Petitioner's agents and dealers there is no proof that such agents and dealers passed them on to the *ultimate* purchasers of machines.

The evidence in the case is that the ordinary purchaser does not read catalogues (R., p. 370), and

hence this alleged cautionary notice was not likely to come to the attention of the ordinary purchaser.

R., pp. 485, 512.

Petitioners also caused to be published and circulated in connection with the sale of their machines the statement that it was "The only typewriter manufactured to-day by a REMINGTON." "Strong, reliable and accurate, it represents the SECOND GENERATION of typewriter manufacturers bearing *this great name.*"

The Petitioners in their instructions to their agents and dealers, after setting forth the merits of the so-called "Remington-Sholes" typewriter, said: "The machine has now been fully explained, and it remains with the salesman to add such other interesting facts such as the history of the company, the connection of our Mr. Remington with this machine and the relation of the old Remington Standard, the fact that this is the SECOND GENERATION of typewriter builders, and that *the same standard of excellence is being maintained in the manufacture of this machine as all other goods which have been produced by the Remingtons.*"

R., pp. 973, 972, 883, 881.

These statements and others of similar import were constantly made and repeated by agents and dealers who also frequently asserted that the Remington-Sholes machine was the *new* and improved Remington typewriter and also that it was the *real* Remington machine.

R., pp. 986, 983, 978, 972, 898, 896, 889, 1038, 1043.

The proofs in the case show confusion in the mind of the public in respect to the identity of the Remington-Sholes Company's business and product with that of Respondent, and that purchasers were actually misled and purchased Petitioner's machines as and for Respondent's.

R., pp. 482, 485, 510, 518.

## Brief of Argument.

**I. If the petitioners have a remedy by appeal to this Court, as alleged in Sub-Division 13, pp. 15 and 16, of their petition, then this application for a writ of Certiorari should be denied.**

*In Re* TAMPA SUBURBAN RY. CO., 168 U. S., 583; PULLMAN PALACE CAR CO. *vs.* CENTRAL TRANSPORTATION CO., 171 U. S., 138.

**II. This Court takes jurisdiction by Certiorari only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision.**

American Construction Co. *vs.* Jacksonville Ry. Co., 148 U. S., 372; Forsyth *vs.* Hammond, 166 U. S., 506; *In Re.* Woods, 143 U. S., 202 Lau Ou Bew's case, 141 U. S., 583.

**III. The inquiry upon this application is whether the questions involved in this case are of such peculiar gravity and general importance in themselves, or whether there is any such conflict of decision on matters of law as to make it the duty of this Court to issue the writ applied for herein.**

A. NO QUESTION OF PECULIAR GRAVITY OR GENERAL IMPORTANCE IS INVOLVED IN THIS CASE.

The questions here in controversy simply concern the parties to this action.

The suit was brought to restrain the acts of the petitioner, Howe Scale Company, a corporation, which resulted in and constituted an unfair and fraudulent competition on its part with respondent in respect to the manufacture and sale of typewriting machines.

The essential vice of petitioner's acts consisted in the adoption and use of the name "Remington" in the corporate name "Remington-Sholes Co.," and as a designation, or a part of a designation, for petitioner's machines and in the use thereof in advertising *media*, etc.

No question of the construction or validity of any Federal or State Statute is involved here. No constitutional question or matter affecting the interests of the nation in its internal or external relations is involved.

All three judges of the Court of Appeals who decided this case were of equal rank, and a majority of them concurred in the findings and decisions of the Circuit Court, except in one unimportant particular.

The only principle of law arising in this class of cases is stated by Lord Halesbury in Birmingham Vinegar Co. *vs.* Powell, App. Cas., 710 (1897), to be "That no man can have any right to represent his goods as the goods of another person," and he said that all the rest are questions of fact.

Manifestly, each case of this character depends upon its own facts and circumstances, and must be decided upon the application thereto of this well settled principle which has received no substantial modification in recent years.

The cardinal rule upon the subject is that no one shall by imitation or any unfair device induce the public to believe that the goods offered for sale are the goods of another, and thereby appropriate to himself the value of the reputation which the other has acquired for his own product or merchandise.

Coats *vs.* Merrick Thread Co., 149 U. S., 562.

The crucial question here was therefore one of fact, whether the petitioners were guilty of the fraudulent acts charged in the bill; that is, had they resorted to any artifice, or done acts calculated to mislead the public and induce it to believe that the goods they offered for sale were the goods of the respondent. Upon the evidence in the record the Courts below found that the acts of the petitioners constituted a fraudulent infringement and invasion of the rights of complainant, and an unfair and inequitable competition. (Pet., p. 73.)

There was no conflict of opinion in this case between the judges of the courts below in respect *of matters of law.*

The dissent of Judge Wallace was solely as to questions of fact. He did not dissent from any proposition of law enunciated in the majority opinion of the Court of Appeals. In fact the learned Judge had already laid down in the Rogers case (70 F. R. 1019) the proposition quoted and applied in the prevailing opinion here. (Pet. p. 62.)

It is therefore manifest that Judge Lacombe correctly observed that "the principles of law govering cases of this kind are simple and easily stated; the only difficulty is their application." Pet. p. 61.

The principle laid down by this Court in the Singer case (163 U. S. 179) "that every one has the absolute right to use his own name honestly in his own business even though he may incidentally interfere with and injure the business of another having the same name," "but although he may use his own name, he cannot resort to any artifice or any act calculated to mislead the public as to the identity of the business firm or establishment, or of the article produced by them, and thus produce injury to the other beyond that which results from the similarity of name," was referred to and recognized by the Circuit Court of Appeals in this case. But neither Franklin Remington nor Carver Remington nor any other individual of the name of Remington was a party defendant to this suit. No

injunction has been issued against any individual bearing the patronymic Remington, and no rights of such individuals to use their names in their business have been impaired or interfered with by the findings or decisions herein.

In view of subsequent events and the voluntary acts of the Petitioners the questions involved in this case have become largely moot questions and, comparatively, of minor importance.

The nominal defendant, the Howe Scale Co., has no real interest in this appeal.

Shortly before the hearing of this case by the Circuit Court, it discontinued the sale of the "Remington-Sholes" typewriter, and has not since that date been engaged either as agent for the Fay-Sholes Co., or otherwise, in the typewriter business.

It further appears in the petition herein (p. 11) that after the decision of the Circuit Court below, and about December 1901, the Petitioner, Fay-Sholes Co. (then bearing the name Remington-Sholes Co.) changed its corporate name and ceased to make and sell its machines under the designation "Remington-Sholes," and also "Rem-Sho," substituting for the word Remington, the name of its chief promoter, President and stockholder, Fay. The corporation was thereafter styled Fay-Sholes Co. and its product Fay-Sholes typewriter, and since that date its business has been carried on and its product advertised and sold under such designations.

The interest of the Petitioner, Fay-Sholes Co., in any alleged right to use the name "Remington" as a part of its corporate name or as the designation of its product, in view of the time which has elapsed since it discontinued such use and the extensive business it alleges it is now carrying on, would seem to be largely academic.

It further appears that Franklin Remington left the employ of the Fay-Sholes Co., after the change of its name, and has organized another corporation known as the Foundation and Contracting Co., of

which he has become the President and business Manager, and is now conducting a business of a different character in the City of New York. (See answer p. 1f ).

Franklin Remington's chief value to the Remington-Sholes Co., manifestly, consisted in his name Remington and not in any knowledge or skill in the typewriting business possessed by him.

The occasion for his connection with the Remington-Sholes Co., having ceased, his employment ceased and he sought other fields of activity.

B. THERE IS NO CONFLICT IN THE DECISIONS OF THE UNITED STATES CIRCUIT COURTS IN THIS CLASS OF CASES, IN RESPECT TO THE PRINCIPLES OF LAW GOVERNING THEM, AND THEY ALL RECOGNIZE THE PRINCIPLES WHICH FROM TIME TO TIME, HAVE BEEN ENUNCIATED BY THIS COURT.

In this class of cases—fraudulent and unfair competition—the courts have had to deal with a great variety of facts and circumstances, and in some cases certain specific facts and circumstances were present and were emphasized, while in other cases those facts and circumstances were not present, or if present, were not discussed for the reason that it was not deemed necessary to refer to them specifically in the decision of the case. But, as heretofore said, all the cases recognize the cardinal rule enunciated by this Court that no one shall by imitation or any unfair device, or by any artifice induce the public to believe that the goods he offers for sale are the goods of another, and thereby appropriate to himself the value of the reputation which the other has acquired for his product. In some of the cases the Courts have referred to the fact that the defendants therein were corporations—artificial persons—having an artificial name, invented for the purpose of unfair competition, and the fact that one or more of the corporators bore a patronymic, which was intentionally selected, adopted and used by the corporation for the purpose of misleading and de-

ceiving the public and confusing the identity of the products and the business of the two concerns, and have said that the fact that such name was that of a corporator could not justify the appropriation and use thereof.

Where the word used by the defendant, as the name or part of the name of his business and product, has previously thereto come to indicate the source of manufacture of particular devices or the products of another, the Courts for the purpose of determining whether defendant is guilty of unfair competition will carefully consider and scrutinize all the facts and circumstances attending the selection and adoption of the name, by the defendant, and the manner of its use. In several of such cases the Courts have enunciated the proposition that "a body of associates who organize a corporation for manufacturing and selling a particular product are not lawfully entitled to employ as their corporate name, in that business, the name of one of their number when it appears that such name has been intentionally selected in order to compete with an established concern of the same name, engaged in similar business, and divert the latter's trade to themselves by confusing the identity of the products of both and leading purchasers to buy those of one for those of the other. . . . . The corporators chose the name unnecessarily, and having done so for the purpose of unfair competition, cannot be permitted to use it to the injury of the Complainant." Other Courts have laid down substantially the same doctrine.

Higgins Co. *vs.* Higgins Soap Co., 144 N. Y., 462.

DeLong *vs.* DeLong Co., 89 Hun, 399.

Garrett *vs.* T. H. Garrett & Co., 78 F. R., 472.

LePage Co. *vs.* Russian Cement Co., 51 F. R., 941.

Clark Thread Co. *vs.* Armitage, 67 F. R., 896, affirmed 74 F. R., 936.

Valentine Meat Juice Co. *vs.* Valentine Extract Co., 17 Patent and Trade-Mark Cases, 673.—Law Times Reports vol. 83, p. 259.

Peck Bros. & Co. *vs.* Peck Bros. Co., 113 F. R., 291, 302.

R. W. Rogers & Co. *vs.* Wm. Rogers Mfg. Co., 70 F. R., 1019.

International Silver Co. *vs.* Rogers, 110 F. R. 955.

International Silver Co. *vs.* Wm. C. Rogers Co., 113 F. R., 526; affirmed 118 F. R., 133.

Fuller *vs.* Huff, 104 F. R., 141.

In every case however, whether the name, corporate or otherwise, was intentionally selected in order to inaugurate an unfair competition and divert anothers trade by confusing the identity of the products is an *inference of fact* to be drawn from all the circumstances and evidence in the record.

(A.) It is alleged that the decision of the Circuit Court of Appeals of the second circuit in the case of National Starch Mfg. Co. *vs.* Duryea (79 Fed. Rep., 651, 101 F. R., 117) is in conflict with the decision of the Court in the case at bar.

In the Duryea case it appeared that Duryea & Co. was a firm, composed of two sons of Hiram Duryea, one of the original founders of the Duryea Starch business and two other persons, and that Hiram Duryea furnished *all* the capital for the firm. It also appeared that Hiram Duryea, during the progress of the suit and before the case came to final hearing, acquired the ownership of the *entire* business.

It was conceded by plaintiff that Hiram Duryea had a right to enter directly or indirectly into the starch business at the time of the commencement of the action, and had a right to permit his name to be used in the new enterprise.

The evidence in the case showed that the defendants simply used the name Duryea & Company, and

had not in any way *garnished* the use thereof. They had simply designated their starch "Laundry Starch" and "Pure Corn Flour" prepared by Duryea & Co., and had never used the word "Duryea" as a designation or part of a designation for their goods. On the appeal from the order granting an injunction *pendente lite* (79 Fed. Rep., 652) the Court said:

"It cannot be denied that, by continuous and rightful use for forty years, the name Duryea's Starch" had become identified with its source of manufacture, and that an attempt by persons by the name of Duryea, or of any other name, to put upon the market their own product under the name "Duryea Starch" could be suppressed.

Inasmuch as defendants have not called their starch by this well-known name, and have not simulated the labels on their packages to those long used by the manufacturer at Glen Cove, the question is whether the defendants have made such an unnecessary and unfair use of the name of Duryea as to deserve the unfavorable criticism of a Court of Equity."

The Court held that defendants had not made an unfair use of the name "Duryea" and should not be enjoined.

In the case of Walter Baker & Co., vs. Sanders, 80 Fed. Rep., 889, 895, the Court of Appeals of the Second Circuit referred to and distinguished the Duryea case from the Baker case, and held that the defendant might not use the surname Baker so as to announce upon labels and advertisements that the goods he sold were "Baker's Chocolate."

(B.) The case of Baker vs. Baker, 115 Fed. Rep., 297, 300, a decision by the Court of Appeals of the Second Circuit, is referred to in Petitioner's Brief. In its facts that case is clearly distinguishable from the case at bar. The defendant was a corporation of the name "Wm. H. Baker."

The Court said, "If the name had been selected unnecessarily and for the purpose of illegitimate

competition with Complainant, we should not hesitate to enjoin it . . . . . but it was selected without any element of bad faith or unfair use, it was not a new name, and it represented a widely known concern engaged in a large business, which had acquired a valuable good will. For reasons of convenience the owner concluded to reorganize the concern as a corporation and desiring to preserve the good will, he chose the name with which the good will was identified. He intended to remain the owner of the concern and has remained its owner as before.

As regards the Complainant, it is wholly immaterial whether the business is conducted as the name of a corporation or that of an individual by the same description." This was simply the case of an individual who had traded under his own name, Wm. H. Baker, and organized a corporation to carry on his own business under his own name. Manifestly there is no conflict between the Duryea and Baker cases and the case at bar. In the Baker case the defendant did not designate its goods as "Baker's Chocolate," but had adopted as a trademark the words "Justice Brand" and a figure of justice, and had otherwise differentiated his product from complainants'.

In the case at bar the proofs show that the Petitioner, the Remington-Sholes Co., (now Fay-Sholes Co.) had adopted and was using not the name of any individual but an artificial name invented for a purpose: that the corporation was organized by a body of associates in which Franklin Remington had only one-twentieth interest; that is, owned 150 out of 3,000 shares of capital stock, and that these Remingtons had no prior skill in or knowledge of the typewriter business and were unknown to the public in connection with that industry. The proofs further show that the Petitioner, had designated and advertised its machine as the "Remington-Sholes" typewriter, that it had used the name "Remington" both in its corporate name and upon

its machines, and garnished its use of the name Remington in its advertisements and by word of mouth, in such a way as to lead the public to believe that its product had been made by the Remington Company (Respondent's predecessor) whose name was a by-word for good workmanship the world over, and that it was either the successor or a branch of the old Remington concern.

(C.) The case of American Cereal Co. *vs.* Eli Pettijohn Cereal Co. (72 Fed Rep., 903, affirmed 76 Fed. Rep., 372,) decided by the 7th circuit, is cited by Petitioners (p. 27). In that case a preliminary injunction was granted which on motion of defendant was dissolved. The product in question was first manufactured and put upon the market by one Eli Pettijohn, defendant's predecessor in business, and one of the organizers and incorporators of Defendant Co., under the name "Pettijohn Rolled Wheat." Prior to the organization of the Defendant Company it was sold under various names by Eli Pettijohn and his son, or by one of them as:

"Pettijohn Breakfast Gems."
"Pettijohn Breakfast Pearls."
"Pettijohn Breakfast Food."

The name "Pettijohn" was first associated with the product by Eli Pettijohn (the father), who was engaged in the manufacture and sale of the product in the State of California for about fifteen years. During all of these years, the name "Pettijohn" was applied to this product, whether manufactured by the father or the son, or by the successors of both or either of them. The plaintiff claimed the title to the name as applied to this product through grant by the son, and the defendant through grant by the father. It being doubtful whether the father ever parted with his right to such use to his name, and whether the son ever acquired the *exclusive* use thereof, in the manufacture and sale of the breakfast food, and whether they were not both entitled to use the name Pettijohn as tenants in

common, the Court of Appeals held that the complainant's title to the name was not sufficiently clear to warrant the issuance of a preliminary injunction. It is manifest that in this case the right and title of the defendant to use the name Eli Pettijohn was as good, if not better, than that of the plaintiff. The evidence in that case showed that Eli Pettijohn was the originator and *pioneer* in the manufacture and sale of "Pettijohn Breakfast Food," and that at the time of the organization of defendant corporation, he had an established business and good will that had been carried on by him for upwards of fifteen years. He caused a corporation to be organized to take over and carry on this *existing business* in which he continued to be actively engaged. To this corporation he gave his full name, "Eli Pettijohn."

Manifestly these facts plainly distinguish this case from the case at bar.

(D.) The paragraph in the opinion of Mr. Justice Bradley in Celluloid Mfg. Co. *vs.* Cellonite Mfg. Co. (32 F. R. 94) from which the excerpt in Petitioner's Brief is quoted (p. 25) reads as follows:

"As to the imitation of the Complainant's name. The fact that both are corporate names is of no consequence in this connection. They are the business names by which the parties are known, and are to be dealt with precisely as if they were the name of private firms or partnerships. The defendant's name was of its own choosing, and, if an unlawful imitation of the Complainant's, is subject to the same rules of law as if it were the name of an unincorporated firm or company. It is not identical with the Complainant's name. That would be too gross an invasion of the Complainant's right. Similarity, not identity, is the usual recourse when one party seeks to benefit himself by the good name of another. What similarity is sufficient to effect the object has to be determined in each case by its own circumstances. We may say, generally, that a

similarity which would be likely to deceive or mislead an ordinary unsuspecting customer is obnoxious to the law. Judged by this standard, it seems to me that, considering the nature and circumstances of this case, the name "Cellonite Manufacturing Company" is sufficiently similar to that of the "Celluloid Manufacturing Company" to amount to an infringement of the Complainant's trade-name. The distinguishing words in both names are rather unusual ones, but supposed to have the same sense. Their general similarity, added to the identity of the other parts of the names, makes a whole which is calculated to mislead."

The learned Justice in determining the question whether the defendant's name was a simulated one, which was obnoxious to equity, applied the test of "a similarity which would be likely to deceive or mislead an ordinary unsuspecting customer."

But he pointed out what similarity was sufficient, "*has to be determined in each case by its own circumstances.*"

It is not seen that there is any conflict between the proposition quoted from the opinion of Justice Bradley, in the case cited, and any proposition enunciated or held by the Court of Appeals in the case at bar.

(E.) In the case of Continental Insurance Co. *vs.* Continental Fire Ass'n. (96 F. R. 846, affd. 101 Fed. R. 255, Referred to in Petitioner's Brief p. 29) the Court held that the word "Continental" being a geographical term was *publici juris*, and that the Complainant could acquire no exclusive right to the use thereof. There being an absence of proof of any fraudulent intent or conduct on the part of the defendant, or that the public had been deceived by any similarity between the names, a preliminary injunction was refused. It is to be noted that in this case the Court recognized the familar rule that "Relief by injunction is sometimes granted in cases where the party enjoined is using as a trade-name

a term which is geographical or descriptive in character and, therefore, could not be exclusively appropriated by the party securing relief."

The Court pointed out that relief is granted in this class of cases not because the complainant had the exclusive right to appropriate the word or term, but because the defendant had fraudulently and deceitfully adopted the words, and similar methods of use, with the purpose and intention of attracting customers away from his rival to himself.

The foregoing authorities are all those decided by the U. S. Circuit Courts, which it is alleged are in conflict with the decisions of the Court in this case or with one another.

It is submitted that a careful examination of these cases fails to disclose any lack of harmony among them in respect of the legal principals therein involved.

(F.) The other cases cited by the learned Counsel for Petitioners, as in conflict with the decisions in the case at bar, are decisions of sundry State Courts.

Any conflict that may exist between decisions of the Courts of the various States among themselves, or between the decisions of State Courts and the Federal Courts, (in the absence of any Federal or Constitutional question), furnishes no ground for this Court to issue the writ prayed for in the petition.

No decision of this Court could set at rest any conflict, (if such there be), between the State and Federal tribunals in this class of cases.

It is scarcely necessary to remind this Court of sundry instances in which it's decisions and those of the State Tribunals conflict. But we submit, that there is no such conflict here as alleged.

(1.) The case of Meneely *vs.* Meneely (1 Hun. 673, affirmed 62 N. Y., 427) decided by the Supreme Court and Court of Appeals of N. Y. State, has been pressed upon the attention of the Court here as an authority repugnant to the decisions in the case at bar. In that case the defendants Clinton H. Meneely

and Geo. H. Kimberly were sued jointly as partners trading under the firm name of Meneely & Kimberly. The Court below issued an injunction prohibiting the use by defendants of the name Meneely *in any way.*

The Court found that defendant had not used, in business, the firm name or any part of the name by which the plaintiff had theretofore been known to the public, nor had defendants designated their product as "Meneely Bells" or "Meneely-Kimberly Bells"; nor had there been any attempt by any act or artifice to appropriate the good will of the old business to which plaintiffs had succeeded. On this state of facts the Court of Appeals held (1) that the injunction granted by the Court below was too broad in that it enjoined Clinton H. Meneely, an individual, from using his patronymic "*in any way*", and (2) there being no evidence that defendant had resorted to any artifice or contrivance to produce the belief or make it appear that the establishment of the defendant was that of plaintiff or connected therewith, an injunction *was unwarranted.*

This case is referred to by the N. Y. Court of Appeals in Chas. S. Higgins Co. *vs.* Higgins Soap Co., 144 N. Y. 462 as an authority upon the proposition that any person may use in his business his family name, provided he uses it honestly and without artifice or deception; but that Court did not find anything in the Meneely case that was in conflict with any of the propositions enunciated or the conclusions reached in Higgins case.

(2) Two other N. Y. cases are referred to in the brief submitted by petitioners—The Scott Stamp & Coin Co. Ltd. *vs.* T. W. Scott Co. Ltd. (15 N. Y. Supp., 325), and Employers Etc. Co. *vs.* Emyloyers Etc. Co., 10 N. Y. Supp., 845. Also The Deposit Co. *vs.* Mutual Deposit Co., 66 S. W., 1032, a Kentucky case, and Monarch *vs.* Rosenfeld, 39 S. W., 236.

All these cases are so clearly distinguishable in their facts from the case at bar that it is not deemed

necessary to trespass upon the time of this Court to discuss them in detail.

Suffice it to say that both of the New York cases were decided long prior to the Higgins case (*supra*), and the De Long cases (32 N. Y. Supp., 203; aff. 35 N. Y. Supp., 509), and hence any expressions of opinion therein that are in conflict with any legal conclusions reached in the De Long and Higgins cases must be regarded as overruled.

In view of the decision of the Court of Appeals of New York State, in the last cited case, it cannot be said that there is any conflict on this subject in the law of that State of which this Court can take cognizance.

*In re.* Woods, Petitioner, 143 U. S., 202, 206.

(3) The case of S. Chivers & Sons *vs.* Chivers & Co. Ltd., 25 Trade Mark Red., 289, (cited by Petitioner, p. 30), is wholly unlike the case before the Court here. An examination of the facts in that case will disclose (1) that the plaintiff failed to establish that the name "Chivers" had acquired a *secondary* meaning in the trade as denoting the plaintiff's jellies, (2) that the defendant was the successor in business of an *old concern* which had been long engaged in the jam trade, (of which jellies was a by-product), under the name S. Chivers & Co., and (3) that defendant had not designated its product as "Chiver's Jellies," and had resorted to no artifice or act calculated to produce confusion in the mind of the public (See Kerly on Trade-Marks, 2d Edition, pp. 506–7).

(4) Another case referred to in Petitioner's Brief (p. 27) is Hazelton Boiler Co. *vs.* Hazelton Tripod Boiler Co. (142 Ill., 494) decided by the Supreme Court of Illinois.

The facts in that case are not analogous to the case at bar, and the doctrine of that case, as was clearly pointed out by the learned Court of Appeals of Seventh Circuit in the Peck Bros. case (113 F. R.,

291, at pp. 299–302), is not in accord with the decisions of the Federal and other State Courts.

(G) THERE IS NO CONFLICT BETWEEN THE DECISIONS RENDERED IN THIS CASE AND THE DECISIONS OF THE COURT, WHICH HOLD THAT A PERSONAL NAME CANNOT BE EXCLUSIVELY APPROPRIATED AS A TECHNICAL TRADE-MARK.

The learned counsel for petitioners earnestly argue in their brief that inasmuch as the name "Remington" was a family name, it was incapable of exclusive appropriation, and, therefore, that the complainant was not entitled to an injunction in this case restraining its use by defendant (citing various cases at p. 9).

The contention of counsel here is a confusion of the bases of two classes of suits—those of infringement of technical trade-marks and those for unfair competition, or perfidious dealing in trade. Suits of the first class rest upon a proprietary interest in or ownership of a trade-mark. Suits of the latter class are founded upon the damage to the trade of complainant and injury to the public by the fraudulent passing off goods of one manufacturer as those of another. In the former class of cases an exclusive right to the trade-mark is indispensable to the cause of action. In the latter no proprietary or exclusive interest in the words, names or means by which the fraud is perpetrated, is requisite to maintain a suit to enjoin them. It is sufficient that the complainant is entitled and has an interest in the good-will of a business, and that this interest or good-will will be injured or rendered precarious by the palming off, by the words, names or symbols adopted, of the goods of another as complainant's. The distinction was tersely and lucidly pointed out in the opinion of the learned Justice in the case of Singer Mfg. Co. *vs.* June Mfg. Co., 163 U. S., 171, 183, 184.

It is also recognized in the cases of Brown Chemical Co. *vs.* Meyer, 139 U. S., 540, 545; Elgin National Watch Co. *vs.* Illinois Watch Case Co., 179

U. S., 665, and McLean *vs.* Fleming, 96 U. S., 245. This is not a case for the infringement of a technical trade-mark. It is *an action* to *restrain unfair competition in business.* For this reason it was not necessary for the complainant here to establish a proprietary or exclusive right to the name "Remington."

It was sufficient to establish an exclusive right to the use of that name as against the defendant, the Howe Scale Co., or its principal the Remington-Sholes Co.

"THERE ARE CASES WHERE THE RIGHT TO USE A NAME TO DESIGNATE A PRODUCT IS SO QUALIFIEDLY EXCLUSIVE THAT THE RIGHT TO THE PROTECTION OF ITS USE AGAINST INFRINGEMENT BY OTHERS RESTS UPON THE GROUND THAT THE USE BY THEM IS AN UNTRUE OR DECEPTIVE REPRESENTATION."

Koehler *vs.* Sanders, 122 N. Y., 65, 74.

Illustrations of this principle are found in Newman *vs.* Alvord, 51 N. Y., 189, 195, cited with approval by this Court in Canal Co. *vs.* Clark, 13 Wall, 311; McAndrews *vs.* Bassett, 10 Jur. (N. S. 540); Croft *vs.* Day, 7 Beav., 88, cited by this Court in 139 U. S., 542; Metzler *vs.* Wood, 8 Ch., 606; Montgomery *vs.* Thompson (1891) App. Cas., 217, 220; Seixo *vs.* Provezende 1, Ch. App., 192, 194; Lee *vs.* Haley, 5 Ch. App., 155, 161; Knott *vs.* Morgan, 2 Keen, 213; Wotherspoon *vs.* Currie, L. R., 5 H. L., 508, 522; Reddaway *vs.* Banham (1896) App. Cas., 199, 204, approved by this Court in 179 U. S., 665; Brewery Co. *vs.* Powell (1897) App. Cas., 710, 716; N. Cheshire Brewery Co. *vs.* Manchester Brewery Co. (1899) App. Cas. 83; American Waltham Watch Co. *vs.* U. S. Watch Co., 173 Mass., 85.

The evidence in the record and findings of the Court below establish that complainant's right to use the name "Remington" is exclusive as against the defendant.

Pet., pp. 53, 54, 72, 73.

**IV. Petitioner's counsel criticise in their brief the form of the injunction order, as being too broad, in that it restrained the Howe Scale Company from the use of the personal name "Remington" (p. 13.)**

It must not be overlooked that in this case the injunction only went against the Howe Scale Company, which in its own right made no claim to the word "Remington," and at the time the injunction was issued had permanently retired from the typewriter business. No injunction has been issued against the Remington-Sholes Co. (now Fay-Sholes Co.).

While the complainant's right to an injunction as against this latter company on the state of facts presented here has been determined by the decisions of the Courts below, the form of injunction to be issued by the U. S. Circuit Court for the Northern District of Illinois will be settled by that tribunal according to the circumstances existing when it is issued.

The form of an injunction order in any particular case necessarily depends on the circumstances.

> Montgomery *vs.* Thompson, 41 Ch. Div. 35 on appeal (1891) App. Cas., 217.
> Wm. C. Rogers Co. *vs.* International Silver Co., 118 Fed. Rep., 133, 134.

It is scarcely necessary to point out that neither Franklin Remington nor any other individual of the name Remington has been enjoined herein from using his own name in his own business. Both the Howe Scale Company and its principal, the Remington-Sholes Company, are artificial persons, and the name "Remington-Sholes" as used by them, to quote the words of the learned L. J., in Valentine Meat Juice Co. case (British Ct. App. 17 R. P. C., 684), "was not the name of any man. It was an artificial name, invented for a purpose." The Court

below having reached the conclusion that the name "Remington" had been intentionally selected, *malo animo*, in order to compete with the respondent and to divert its trade to petitioners, by confusing the identity of the products of both to the injury of respondent, and was being used for that purpose, was correct in suppressing such fraudulent use. In the following cases an injunction similar in form to that of the case at bar was awarded.

Montgomery *vs.* Thompson, 41 Ch. Div. 35 on appeal (1891) App. Cas., 217.

Wotherspoon *vs.* Currie, L. R. 5 H. L., 508. Valentine Meat Juice Co. Ltd. *vs.* Valentine Extract Co. Ltd., and others, 17 R. P. C. British Ct. App., 673, 688.

Pinet *vs.* Maison Louis Pinet, 15 R. P. C., 65, 67 L. J, Ch., 41.

Newman *vs.* Alvord, 51 N. Y., 189, 195.

and many other similar cases.

**V. The Court below found as a fact that the name "Remington," which was selected, adopted and used in petitioner's corporate name and upon its machines was not fairly or honestly bestowed thereon, but was adopted and used for the purpose of filching the good will of complainant's business.**

We do not deem it necessary on this application to discuss at length the evidence on which the Court below predicated its findings of fact. Suffice it to say the proofs fully support the above conclusion, and it must be treated as presumptively correct in this Court. We briefly refer to certain of the questions of fact, discussed in Petitioner's Brief.

Various reasons are assigned in Petitioner's Brief why it was reasonable and fair for the Remington-Sholes Typewriter Co. and the Remington-Sholes Co. to adopt the name Remington-Sholes as its corporate name (pp. 13–14.)

1. The first reason assigned is that both Remington and Sholes had labored incessantly for many months in the production of the machine; Sholes contributing his inventive genius and Remington furnishing the funds to re-construct the machine. It has already been pointed out that the evidence shows that the model machine had been produced and was complete and ready for manufacture by "The Z. G. Sholes Co." when the Remingtons acquired their interest therein, and that no material changes were made in this model, after the Remingtons acquired their interest and prior to the organization of the Remington-Sholes Typewriter Co.

Subsequent to the organization of that company, in May 1894, some changes in and additions to the machine were made in preparing it for sale. The labors of Franklin Remington prior to the organization of the company consisted in his efforts, already referred to, in exploiting the model and the improvements therein. The evidence established clearly, that the machine was the *entire* product of Sholes, and was marked and known as "The Z. G. Sholes" machine until November 18, 1893. There is no basis in the evidence for the statement in petitioner's brief (p. 14), that the machine was "reconstructed" prior to the organization of the Remington-Sholes Typewriter Co.

2. The second reason assigned is, "because it (the corporation) was to manufacture a machine which was distinctly the product of and owed its existence to both Remington and Sholes. This reason is in substance the same as the first and is not supported by the evidence in the case. It may be well to note at this juncture *that no machine of any kind other*

*than the model was made prior to the formation of the Remington-Sholes Co.*

3. The third reason assigned is (brief p. 14) "because it is the almost universal custom in the typewriter trade to identify by the same name the corporation and the machine it is to manufacture." This is an inaccurate statement of fact. The answer herein shows that many machines do not bear the same names as the concerns that manufacture them (see answer p. 22.) In this connection it may be said that when the name of the model machine was changed from "The Z. G. Sholes" to the "Remington-Sholes" the petitioner's predecessors unnecessarily departed from the alleged custom.

4. The fourth reason assigned (brief p. 14) that "the public would be interested in the coming together of these sons," has no solid foundation and is largely sentimental. The evidence establishes the fact that Sholes' father did not alone originate the pioneer model typewriter, but that it was the joint product of several inventors.

5. The fifth reason assigned for the adoption of the name "Remington" is because the family name of Remington had a world-wide reputation in many lines of trade (brief p. 14) "other than that and distinct from the typewriter business." It may be answered that the respondents have never objected, and do not now object, to Mr. Remington or the Remington-Sholes Co. using the name "Remington" *ad libitum* in any lines of trade other than and distinct from the typewriter business.

The sole question in this case was whether the acts done either in organizing the Remington-Sholes Typewriter Co. and Remington-Sholes Co., or in the prosecution of their business, of the manufacture and sale of typewriting machines invaded any right of the respondent or constituted unfair competition in business.

It was conceded by petitioners, in the Courts below, that respondent had a world-wide reputation

in the typewriter business when the Remington-Sholes Typewriter Co. was formed. It was not disputed that respondent had succeeded to the whole typewriter business of E. Remington & Sons (corporation), including the good will and trademarks thereof, and had largely improved the quality of the machines and volume of business. Any reputation or good-will connected with the old concern was vested in Respondent. It is to be borne in mind that none of the older Remingtons were *personally* engaged in the typewriter business, and that Franklin Remington's father had no knowledge or skill therein, but was always *hostile* to the business during the time it was carried on by the corporation, E. Remington & Sons.

6. An additional reason assigned for the adoption and use of the corporate name "Remington-Sholes" is, that the Remingtons have a right to use their names like ordinary property, and that they had a right to bestow such names in the usual way upon a corporation of their own creation in which they held a large part of the stock, etc. (Brief, p. 15.)

The evidence in the record shows that the corporation was chiefly promoted and organized by Fay (Rec., p., 408) who was president and principal stockholder. Subsequently he, together with Head, furnished the working capital for the company. Neither of the Remingtons nor Sholes contributed any funds to the organization of the company, or paid any cash for their stock. In the reorganization of the company neither Carver Remington nor Sholes retained any interest therein, and Franklin Remington was given only 150 shares of the *common* stock. Franklin Remington and Sholes were employees of the company, and received compensation for any time and energies which they devoted to the service of the Company. Without regard to the question whether an individual has the right to bestow his name fairly and honestly on a corporation of his own creation, and which represents his business and capital, it is substantially conceded by

petitioner's counsel in their brief (p. 23), that *he may not do so dishonestly or to perpetrate a fraud.* The vice of the reason, assigned here by petitioner's counsel, is that it assumes in petitioner's favor the disputed question of fact found against them by the Court below, to wit, that the name Remington-Sholes Co. was not taken fairly, honestly or for a legitimate purpose by the corporators of the Illinois corporation. These contentions were raised and strenuously urged by Petitioners in the Courts below, but the Courts found against the Petitioners.

7. While it is true that many typewriting machines bear the name of the inventors or manufacturers (See Petitioner's Brief, p. 15,) it is equally true that many do not. (See answer, p. 22 .)

There is no established custom in the premises. If there exists any such alleged custom, the correct name for Petitioners machine would have been either "The Z. G. Sholes" typewriter, the name of the alleged "sole inventor" (Pet., p. 14) or "Fay-Sholes" typewriter, the names of (1) the principal promoter, stockholder and official and (2) the sole inventor of the machine.

The learned Circuit Court of Appeals in the prevailing opinion said, in referring to selection of the name Remington Sholes, "we have no doubt it was an intelligent choice. Those who selected it well knew that the use of the name Remington in connection with a typewriting machine would help to sell it as the name of Brown or Peterson would not." (Pet., p. 65)."

Sholes testified in substance, that he changed the name of the model from "The Z. G. Sholes" to "Remington-Sholes" because the name Remington had been used in connection with Respondent's typewriter business and machine, and that if names of the Remingtons had been *Smith or Peterson* he would not have made the change of name (Record, pp. 425-26.)

It also appears in the testimony in the case that Fay, directly after the corporation was organized

and before its product had been manufactured or placed upon the market, or the name "Remington-Sholes" was made known to the public in connection therewith, regarded the name "Remington" as of material advantage in selling Petitioners machines, (Rec., pp. 447–448,) and that after the machines had been placed upon the market he did not consider *the machine itself of any considerable value.* He said that the only value that he attached to it was that it bore the name *Remington-Sholes.* (Rec., p. 419). Manifestly the only part of the name which at that time was of any material value was the name Remington, which had then acquired a world wide reputation in connection with the typewriting machines and business of Respondent. Respondent's Counsel frankly conceded, in the Courts below, that the choice of the name was "an intelligent one" and that both Fay and Head at the time of its adoption by the Illinois corporation agreed with Sholes that the name "Remington-Sholes" was a good combination and furnished "a good talking point."

In view of the foregoing facts, and others of similar nature disclosed in the testimony, we submit that the conclusions reached by the learned Court of Appeals were fully justified.

8. The question of whether under certain circumstances a corporation may be considered and treated as a partnership is not material or pertinent to the issues raised here. The question here is whether a body of associates or promoters can adopt for the name of a corporation and its product the trade-name of an established concern, whose product had acquired a world-wide reputation in connection therewith, for *the purpose of filching the good will of its business.* The fact that this name happened to be the patronymic of one of the Petitioners incorporators, is, as we conceive not material.

Higgins Co. *vs.* Higgins Soap Co., 144 N. Y., 462, 468.

9. The constant iteration in Petitioners brief that the business of the Remington-Sholes Typewriter Co. and Remington-Sholes Co. was Franklin Remington's business is contrary to the proofs in this case. He was never more than a minority stockholder in the corporation.

## VI. Much emphasis is laid in Petitioners brief on the alleged decisions of certain Courts in Germany (P. 35.)

An alleged decision of the German Courts was pleaded as a defense by appellant, (R. V. I. pp. 29, 30 Sub-division XII), but it was not introduced in evidence or any proof made in respect thereto. The Appellant gave notice upon the record that at the hearing of the cause it would refer to said decision. *It is scarcely necessary to state that allegations without proofs requisite to support them are wholly unavailing.* That action was a civil proceeding by the firm of Glogowski & Co. of Berlin, against one Henry Newald of the same City, under the CIVIL CODE and TRADE-MARK LAWS of the German Empire. At the time the action was prosecuted, Glogowski & Co., were the exclusive resident dealers for Germany of Respondent's machines, and Newald was a dealer selling the so-called Remington-Sholes machine in Germany. Glogowski & Co. being the resident dealers of Respondent's machines, under the German Trade-Mark Law, registered the name "Remington" as a trade-mark for the goods they were selling. Newald was selling the machines of the Remington-Sholes Typewriter Company, with the name of that concern upon them.

IT WAS AN AFFIDAVIT CASE; that is to say, no witnesses were examined in Court, or depositions taken in the usual manner, nor were any of the affiants cross-examined. The consequence was that while the *Plaintiff's* case was meagerly and imperfectly presented, the defendant Newald was furnished with sundry affidavits by the Remington-

Sholes Typewriter Company, which not only stoutly denied the Respondents right to use the name "Remington" upon or in connection with the sale of its machines, but also contained many gross misstatements of fact. The Court ultimately came to the conclusion that inasmuch as the defendant Newald dealt exclusively in the goods of an American firm, which had the name "Remington-Sholes Typewriter Company" upon them, he could not, *under the special provisions of the German Trade-Mark Law, and in view if the convention between the German Empire and the United States*, be prevented from selling the typewriting machines of the so-called American firm, "Remington-Sholes Typewriter Company," in Germany: Obviously the *parties* to that proceeding, the *issues* therein, and the *law* applicable thereto were *totally* different from those in the case at bar. THE DECISION OF THE COURT IN THAT CASE CANNOT AVAIL THE DEFENDANT OR ITS PRINCIPAL AS AN AUTHORITY HERE."

*First*, because the question there, was one which arose under the Trade-Mark Laws of *Germany*, which are wholly unlike those of this country. *Second*, because no such state of facts was presented in that case as is disclosed in the case at bar. *Third*, because it has been decided that an adjudication in *Germany* like that set forth in Appellant's answer, is of no force here, for the reason that foreign adjudication as respects *torts*, are not binding upon the Courts in this country, and the granting of an injunction depends upon circumstances which vary in different jurisdictions; and *lastly* because the parties in the *German* case were other and different from those in this action."

Whart. Confl. Laws, Secs. 793, 827.
Hohner *vs.* Gratz, 50 Fed. Rep. 369.
City of Carlsbad *vs.* Kutnow, 68 Fed. Rep. 794.
S. C. App., 71 Fed. Rep. 167.

This German decision furnishes no ground for the interposition of this Court herein.

**VII. A contention is made in Petitioner's Brief (pp. 36–7, petition p. 17) that the Courts below erred failing to pass upon the alleged error of the lower Court in admitting certain evidence introduced by Respondent, and in failing to tax it with the cost thereof.**

It is true that a motion was made by Petitioners in the Circuit Court that certain evidence taken by Respondent "be suppressed or stricken from the record." Rec. Vol. III, pp. 1440–42.

*But no motion was made in any court to tax the costs of this evidence against the Respondent herein.* No such request was made in Petitioner's brief filed in the Circuit Court, and no such request was made in the Circuit Court of Appeals.

It was, in substance, nothing more than a motion to disregard certain evidence. And under well settled practice the Court had no power to suppress or strike from the record testimony taken in the Court below.

Blease *vs.* Carlington, 92 U. S. 1.

The Circuit Court overruled the motion and held that the testimony was relevant (Pet., pp. 48–49). It does not appear that the learned Circuit Court of Appeals predicated its decision herein on any portion of this evidence.

The decree entered in the Vermont Court, after the decision of the Circuit Court of Appeals, was in strict accordance with the mandate issued out of the latter Court, which embodied a copy of the original decree of the Circuit Court. (Answer, p —.)

In view of the fact that neither party had wholly prevailed in the Circuit Court of Appeals, that Court modified the decree of the Court below "without cost," leaving undisturbed the question of costs in the Court below.

**VIII. Petitioners contend that the order of the Court made in the suit brought by Respondent against the Fay-Sholes Co., in the Northern District of Illinois, making the determination of the Court of Appeals, in the suit at barres adjudicata in the Illinois case as to all issues involved therein, except as to an accounting, presents a further reason why the present petition should be granted.**

(Brief, p. 36; Pet., pp. 11 and 12, p. 18.)

This order was entered pursuant to *stipulation* of defendant in that suit. It would seem plain that, in view of this stipulation and order of the Illinois Court, no danger of any multiplicity of suits exists, and that all issues between the parties to that action have been finally determined except matters arising on an accounting.

In this connection it is to be noted that the Remington-Sholes Co. (now Fay-Sholes Co.), *voluntarily* assumed the defence of the Vermont suit, employed its own counsel, examined and cross-examined through its own counsel, and has presented its defence both in the Circuit Court and the Court of Appeals of the Second Circuit.

The case has, from commencement to conclusion, been treated as one against the Remington-Sholes Co., in so far as the questions at issue herein are concerned.

Manifestly it has had a full and ample opportunity to present its case.

**IX. An excerpt is made in Petitioner's Brief from the prevailing opinion of the Circuit Court of Appeals and from which it is sought to draw the erroneous inference that a majority of that Court held that there was no sufficient evidence in the record that the Petitioners had been guilty of any fraudulent acts or unfair competition in this case, except that to be inferred from their mere adoption of the name Remington.**

An examination of the prevailing opinion as a whole will establish that this contention is without foundation.

The sentence quoted when read in the light of the subsequent statements in the opinion shows that the learned Judge then had in mind that the crucial question in the case was whether the selection, adoption and use, by the Illinois corporation, of the name "Remington" as a part of its corporate name and of the designation of its product were fairly bestowed and used (Pet., p. 59).

**X. Stress also has been laid by petitioners on some differences in the design and finish of their machines and those of the respondent.**

It is true that there were some differences in appearance, between Respondent's and Petitioner's machines, but these differences would escape the attention of the ordinary unsuspecting purchaser of writing machines, who is not familiar with *details* of structure, and if he noted them at all, would be led to suppose *that the differences simply indicated different models or styles of writing machines made by the same manufacturer.* The proofs in

this case show that purchasers ordinarily are of that class, who are unacquainted with the *physical* characteristics of the machines; that it is the *exception* that the buyer possesses any *information in detail* of the typewriter, and that it is the *rule* in the *larger* cities that the *business man* does not even examine the machine which he purchases. *Moreover in this country, very few buyers are operators.*

A large class of purchasers therefore, both in this country and abroad, buy the machines with no information except what is communicated to them by the word "Remington" in connection with the word "typewriter". The purchaser does not and is not bound to study or reflect. He acts upon the moment. He is without opportunity of comparison. He relies upon the name and repute of the machine. These facts must be taken into account by the Court and also the fact that the market is not local, but world-wide. The contention of Petitioners that their machines were in finish and outward appearance unlike Respondent's, and, therefore, that the public and purchasers of typewriting machines could not be misled was practically abandoned and not regarded as of force in this case, because the proofs show that the Petitioners put upon the market a writing machine which in *external appearance, finish and design* more nearly resembled the machines of Respondent than those first manufactured and sold by them. *This machine was japanned in black, and was designated the No. 6 "Remington-Sholes" or "Rem-Sho".*

In this connection the attention of the Court is called to the fact that Respondent's "Remington No. 6 Machine" was and is the one principally sold and used in this country. Either Petitioners did not regard the *mere external appearance and finish of their machines* as of any consequence, in so far as the question of infringement was concerned, or else they grew bolder, and their desire for gain induced them *to more closely simulate the design and finish of*

*Respondent's machines* and to designate their *new* model the "Remington-Sholes" (Rem-Sho) No. 6. It will be observed that in one case it was the "Remington No. 6" and in the other the "Remington-Sholes", or "Rem-Sho No. 6".

But conceding for argument's sake that Respondent and Petitioners machines were somewhat different in finish and external appearance, nevertheless the name "Remington" had been so identified with the business of Respondent as to inform the public that that name upon writing machines meant that they were its product, and since Petitioners adopted and used that name, it was not material that their machines had not also the *particular* design and finish in which Respondent's typewriters were presented to the public.

Fuller *v.* Huff, 104 Fed., Rep. 141;
Hier *v.* Abrahams, 82 N. Y., 519;
Le Page Co. *v.* Russia Cement Co., 51 Fed., Rep. 941, 945.

**XI. The Petitioners allege that it was the practice to mark their machines with the words "Remington-Sholes" and with the word Chicago; that it had used those words in its advertisements, etc., and thereby its machines had become distinctly known and were differentiated by the public from those of respondent's manufacture.**

Now, while the proofs show that the words "Remington-Sholes" or Rem-Sho, and the word "Chicago" appeared on its machines, and in its advertisements, there is no proof that the purchasing public thus recognized or differentiated its machine from Respondents. In the first place, it is to be observed that the hyphenated name "Reming-

ton-Sholes," and "Remington-Sholes Co." which are alleged to have been stamped upon all machines and to have appeared in Petitioner's advertising media, are *the very words here in controversy;* that is to say they contained Respondent's trade-name or designation "Remington," combined with the suffix "Sholes." *This is therefore, not the case of a manufacturer bearing a non-infringing name,* who stamped it on his goods, *but is one where both the designation of the goods and the manufacturers' name stamped thereon* infringed upon Respondent's rights. In other words the stamping of the corporate name "Remington-Sholes Co." upon the machines was *an aggravation and not a justification.* Both names indicated Remington connection, and implied the original manufacturer.

It appears, in the testimony here, that Respondent has for many years carried on an extensive business in Chicago and in the territory adjacent thereto, *that much confusion in business arose in Chicago* in consequence of Petitioner's use of the word "Remington" in its *corporate name*, and the same name upon its machines and in its advertisements. The fact, however, is that the ordinary purchaser of writing machines does not go into *details.* He does not examine *name plates or catalogues* to ascertain by whom or where the machines are made.

R. pp. 370, 371, 450, 451, 452.

Very few purchasers know where or by whom the machines are manufactured.

R. p. 451, 544.

Furthermore the name and address "Remington-Sholes Company, Chicago," might well suggest to the ordinary unsuspecting purchaser that petitioner's business was a *branch* of Respondent's.

R. pp. 999, 1000.

In this case it was also established that the name "Remington-Sholes" was always used as a designa-

tion for petitioner's machines, and the term "Rem-Sho" was simply an abbreviation thereof.

Furthermore, it is not to be forgotten that the name "Sholes," which was suffixed or added to the name Remington, tended rather to accentuate the connection of the Remington-Sholes Co. with the respondent and its machine than to differentiate it.

It appears in the record that the name Sholes had been associated with the earliest form of respondent's predecessor's machines, in consequence of Sholes being one of the orignators thereof.

The earliest model put on the market by E. Remington & Sons Corporation was designated "Sholes & Glidden." *No two names could have been selected from the vocabulary of the world which were so well calculated to divert and injure the good will of respondent's business as the names Remington-Sholes*, and that petitioners *knew* this fact is shown by the continual iteration in their publications and by word of mouth that Mr. Sholes is the son of "the original inventor of the Remington Standard Typewriter" (Pet. 5) and that Mr. Remington is the "son of the original manufacturer of the well known typewriter that bears his name" (Pet. 5). We submit, therefore, that the petitioner's proposition that by making use of the suffix "Sholes" it did that which tended to differentiate its product from that of respondent's cannot be maintained. On the contrary the selection and use of the name "Sholes" added materially to the probabilities of mistake and tended to produce rather than to prevent confusion in business.

**XII. Stress is laid in petitioner's brief upon the Remington-Sholes Co.'s endeavor "in every conceivable way" by alleged cautionary notices, etc., to prevent confusion** (p. 37).

The only evidence in the record is the alleged fact (1) that in the year 1894 it placed in the window of one of its offices, to-wit, at *Chicago*, and had printed in the *Chicago* Directory for 1894, the ambiguous statement, "Not the Remington Standard" and (2) printed an alleged cautionary notice toward the end of its 24-page catalogue.

There is no evidence that it ever placed this notice on any other office window than that at *Chicago*, and this remained only a short time. There is no proof that the notice in the directory was renewed after 1894, which was before the machine was placed on the market.

The notice in the catalogue contained sundry misstatements of fact, and does not inform the public that the petitioner had no connection with the respondent or with the old Remington establishment at Ilion. Moreover, there is no evidence that these catalogues or notices came to the knowledge of the ultimate purchasers. In fact in the instances in the record where purchasers were misled it appears that no catalogues or notices were given them. On the contrary, in all notices and statements and instructions to agents and dealers they were constantly linking and connecting their business with that of respondent's and its predecessor, E. Remington & Son.

A typical example of petitioner's "instructions" to its agents and dealers may here be quoted:

"THE MACHINE HAS NOW BEEN FULLY EXPLAINED AND IT REMAINS WITH THE SALESMAN TO ADD SUCH OTHER INTERESTING FACTS, SUCH AS THE HISTORY OF THE COMPANY, THE CONNECTION OF OUR MR. REMINGTON WITH THIS MACHINE AND

THE RELATION TO THE OLD REMINGTON STANDARD, THE FACT THAT THIS IS A SECOND GENERATION OF TYPEWRITER BUILDERS, AND THAT THE SAME STANDARD OF EXCELLENCE IS BEING MAINTAINED IN THE MANUFACTURE OF THIS MACHINE AS ALL OTHER GOODS WHICH HAVE BEEN PRODUCED BY THE REMINGTONS."

Again, prominently on the title page of many of the catalogues "distributed broadcast through the country" (Brief, p. 9), were the words: "*The only machine now manufactured by a Remington.*" And in other publications petitioner said: "The only typewriter manufactured by a *Remington.* Strong, reliable and accurate, it represents the *second generation* of typewriter manufacturers bearing this great name."

These statements and others were continually made by agents and dealers by word of mouth and in advertising media.

The petitioners and their agents and dealers in offering for sale, advertising for sale and selling the so-called Rem-Sho (Remington-Sholes) machines, used among others the following names and designations, to wit:

Remington-Sholes Typewriter.
Rem-Sho Typewriter.
Remington Sholes Co.
REMEMBER THE NAME.
The Remington-Sholes Standard Typewriter.
REM-SHO.
Remington-Sholes.
Standard Typewriter.
Remington Imperial.
Remington Typewriters . . . . . called Remington Sholes.
Remington-Sholes.
Remington Sholes, New Model "Remington."
These Genuine Remingtons made by Remington Sholes.

Rem-Sho Typewriter.

The only typewriter manufactured to-day by a REMINGTON.

. . . . . It represents the SECOND GENERATION of typewriter manufacturers bearing this great name.

The only machine made by a Remington is the new Remington Sholes.

Rem-Sho Typewriter, the only machine now manufactured by Mr. Remington.

Mr. Franklin Remington, Son and Grandson of the old and celebrated American house is the only member of that family now engaged in the manufacture of a typewriter. . . . .

In conclusion we respectfully submit:

I. That if these petitioners have a remedy by appeal they ought to pursue it.

II. That there is involved in this case no question of such gravity or general importance as to make it the duty of this Court to issue the writ applied for herein.

III. That there is no conflict in the decisions of the United States Circuit Courts in this class of cases in respect to the principles of law governing them.

IV. That the Courts below in this case recognized and correctly applied the principles of law hitherto enunciated by this Court in this class of cases.

V. That the Courts below *found as a fact* that the name "Remington," which was selected, adopted and used in petitioner's corporate name and upon its machines, was not fairly or honestly bestowed, but was adopted and used for the purpose of filching the good will of complainant's business, and this finding must be taken on this application as presumptively correct.

VI. That the petitioners having admittedly had ample opportunity to fully present their contentions in this case to the Courts below, and having failed to satisfy either of those Courts as to their honesty and good faith in the selection, adoption and use of the name "Remington-Sholes" ought not to be allowed to burden this Court with a re-trial of the questions of fact involved herein.

EDMUND WETMORE,
HENRY D. DONNELLY,
Attorneys and Counsel for Respondent.

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM A.D. 1903.

Office Supreme Court U.S.
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JAMES H. McKENNEY,
Clerk.

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HOWE SCALE COMPANY OF 1886
AND FAY-SHOLES COMPANY,
*Petitioners,*

*vs.*

WYCKOFF, SEAMANS & BENEDICT,
*Respondent.*

# ANSWER TO PETITION FOR CERTIORARI.

EDMUND WETMORE,
HENRY D. DONNELLY,
*Attorneys and of Counsel for Respondent.*

PRESS OF
A. H. KELLOGG, NEW YORK

# Supreme Court of the United States, 1

OCTOBER TERM A. D. 1903.

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HOWE SCALE COMPANY of 1886 and FAY SHOLES COMPANY,
Petitioners,

*vs.*

WYCKOFF, SEAMANS & BENEDICT,
Respondent. 2

**Answer to the petition for writ of certiorari, requiring United States Circuit Court of Appeals for the Second Circuit to certify to the United States Supreme Court for its review and determination, the case of Wyckoff, Seamans & Benedict, Complainant-Appellee, vs. Howe Scale Co., of 1886, Defendant-Appellant.**

*To the Supreme Court of the United States of America.* 3

Now comes the Respondent, Wyckoff, Seamans & Benedict, a corporation created and existing under the laws of the State of New York, and for an answer to the petition herein, says as follows:

4 1. That this Respondent was created by the laws of the State of New York in 1892, and is the lawful successor in the typewriter business and the good will thereof of two Remington corporations,—E. Remington & Sons, and Remington Standard Typewriter Manufacturing Co. The former was incorporated in 1865, for the manufacture of guns, etc., and its typewriter business was founded in the year 1873 and the latter in 1886.

Record pp. 663–666, 730, 753–757, 768–780, 40, 42.

*a.* That the manufactory and works of the Respondent were established at Ilion, N. Y., by said E.
5 Remington & Sons Corporation, at which place the business has ever since been located and carried on.

R. pp. 665, 72, 73, 96, 97.

*b.* That the capacity of the works has been from time to time greatly increased and the quality of the machines improved to meet the demands of a constantly growing business, which always has been, and now is, the largest and most valuable typewriter business in the world.

R. pp. 72, 73, 79, 95, 96, 97.

*c.* That the Respondent's typewriter was the pioneer writing machine, and has always been one
6 of the foremost in reputation for good construction, and most favorably known to the public.

R. pp. 61, 62, 101, 207.

*d.* That the writing machines of Respondent and its predecessors have for many years been known to the trade and to purchasers and users of writing machines as the "Remington" and "Remington Typewriter," and have been so designated, advertised for sale, offered for sale, and bought and sold, and said name became, was and is the trade denomination of Respondent's machines and business.

R. pp. 235, 236, 64-66-92, 141, 165, 190, 206, 272, 288.

*e.* That at the time the Petitioners and their predecessors entered the typewriter field, Respondent's typewriting machines were associated in the public mind with the name "Remington," so that the ordinary purchaser was likely to assume that the machines offered him for sale and bearing the name "Remington" had come from the establishment founded by the Remingtons at Ilion, N. Y., to whose typewriter business Respondent's predecessor succeeded in the year 1886 and the Respondent in 1892. 7

Petition pp. 49, 50, 51, 53, 54, 58, 72. R. 482, 487, 510–518, 999, 1,000.

*f.* That in and by an assignment in writing, dated March 22d, 1886, the said E. Remington & Sons Corporation, duly assigned, transferred and set over unto Respondent's predecessors, all rights, interests, privileges, franchises, tools, machinery, patterns, goods, wares, merchandise and property which the said E. Remington & Sons had held or owned in and about the manufacture, use or sale of typewriting machines, which transfer included and conveyed the good will, trade-names and trademarks used in said business, and in connection with the manufacture and sale of typewriting machines, and that said E. Remington & Sons, covenanted and agreed that they would not thereafter engage in the manufacture of typewriting machines of any name or character for a period of ten years from the date of said assignment. 8 9

R. pp. 716–723, 734, 745.

*g.* That shortly after said sale, assignment and transfer of said typewriter business was made by said E. Remington & Sons Corporation to Respondent's predecessor the said E. Remington & Sons Corporation became insolvent, its property and assets went into the hands of a Receiver and said corporation was subsequently dissolved and ceased to exist.

R., p. 81.

10 *h.* That prior to the year 1894, Respondent and its predecessors were the only Remington concerns that had ever been engaged in the manufacture and sale of typewriting machines, and the only concerns that had ever used the name "Remington" in connection with the manufacture or sale of typewriting machines.

R., pp. 61, 62, 101, 410.

*i.* That long prior to the time when Petitioner's predecessor, The Remington-Sholes Typewriter Co. was organized and entered the typewriter field, the Respondent and its predecessors placed the name "Remington" conspicuously upon their machines,
11 and had extensively advertised the same in catalogues and other advertising *media* as the "Remington" typewriter.

Petition, pp. 53, 54, 58, 72. Petitioner's Brief, p. 3. R., pp. 120, 141, 148, 190, 275, 283, 329, 336.

*j.* That while it is true that the word "Standard" and the trade-mark consisting of a red seal have been used upon Respondent's machines and to some extent in advertising *media*, the evidence in the record leaves no possible room for doubt that in the trade, and to the ordinary purchaser and user of typewriting machines, Respondent's product for a
12 great many years has been known as the "Remington" typewriter, and identified, bought and sold by that designation.

R., pp. 210-232, 272-275-279, 316.

*k.* That in arguement in the Courts below, the Petitioner's Counsel admitted that the name "Remington" was a by-word for good workmanship the world over, and that when the Remington-Sholes Company and its predecessor entered the field, Respondent had a world-wide reputation.

Petition, pp. 52, 54, 64, 65, 72.

*l.* And Respondent avers that its reputation was 13
accrued through the manufacture and sale of the Remington Typewriter.

*2.* That the Petitioner Fay-Sholes Co., formerly known as the Remington-Sholes Co., was in truth and in fact but a re-organization of the Remington-Sholes Typewriter Co., which latter Company was incorporated in or about the month of May, 1894.

R., pp. 430, 431. Petitioner's Brief, p. 7.

*3.* That in or about the year 1892, one Zalmon G. Sholes made a model typewriting machine, which he designated "The Z. G. Sholes." This model was destroyed by fire, and another model machine was subsequently constructed on the same general 14
lines.

R., pp. 390, 391, 392; Pet., p. 64.

*a.* Prior to the construction of these two models, Sholes had made certain alleged improvements which were embodied therein, and for which applications for Letters Patent of the United States were filed. Several persons were interested with Sholes in the model machine and the alleged improvements contained therein.

R., pp. 391–396; Pet., pp. 59, 60.

*b.* In or about the month of April, 1893, Sholes and his associate owners, organized a corporation 15
under the laws of the State of Wisconsin, the capital stock of which was ultimately fixed at $100,000. This company was organized to manufacture and sell typewriting machines, similar in construction and mode of operation to "The Z. G. Sholes" model. The corporation and model machine were named respectively "The Z. G. Sholes Co." and "The Z. G. Sholes" typewriter. After the formation of the Company, and some preliminary steps were taken in the way of making tools and machinery to be used in the manufacture of machines embodying the features illustrated in said model,

16 Sholes' associates declined to proceed further with the undertaking, in consequence of their inability to provide sufficient capital to manufacture the machine for sale.

R., pp. 397, 398, 389, 401.

*c.* Shortly thereafter Sholes became acquainted with Messrs. Carver and Franklin Remington, who at that time were contractors engaged in excavating a portion of the Chicago Drainage Canal.

R., pp. 401, 402, 412.

*d.* These two Remingtons were the sons of one Samuel Remington, who at one time, was an officer
17 and director of E. Remington & Sons Corporation, but had never been engaged personally in the manufacture or sale of typewriting machines, and had no knowledge of or skill in the business and was hostile to the typewriter enterprise of said corporation.

R., pp. 38, 43, 55, 57, 100, 101.

*e.* On the 26th of August, 1893, the Remingtons became jointly interested with Sholes in the model machine and the stock of "The Z. G. Sholes Co."

R., pp. 825–827.

*f.* After the Remingtons acquired their interest in this model, the alleged improvements therein and
18 stock of "The Z. G. Sholes Co.," they in company with Sholes visited Ilion, N. Y. and New York City for the purpose of disposing of their interests in said model, etc., and, among others, endeavored to dispose of said model, to the Remington Arms Co., and to the Respondent herein.

R., pp. 414, 415.

*g.* At that time neither the Remingtons nor Sholes had any idea of engaging in the manufacture of typewriting machines. They had no knowledge of or skill in that business.

R. pp. 412, 414.

*h.* Failing in their endeavor to interest Eastern capitalists in their model machines, etc., they returned to Chicago, and there sought to interest capitalists, and began the promotion of a Company which was subsequently organized as the Remington-Sholes Typewriter Co. 19

R., pp. 417, 418. Pet., p. 60.

*i.* Shortly after Sholes and the Messrs. Remington returned to Chicago, and in or about November, 1893, the name of the model was changed from "The Z. G. Sholes" to the "Remington-Sholes"; the designation of the model being changed because the name "Remington" was famous in typewriter manufacture, and had been used in connection with Respondent's business and typewriting machine. 20

R. pp. 417, 418, 426. Pet. pp. 64, 65.

*j.* Prior to the organization of the Illinois Corporation, hereinafter mentioned, the Remingtons alleged that they had expended in the purchase of interests in the model machine, inventions, etc., about $8,000 or $9,000, and, in addition to this sum, $6,000 or $7,000 were spent for salaries to Sholes and the mechanic, who made some slight changes in the model, for travelling and other expenses, attorneys' fees, etc., amounting in all to about $15,000.

R., pp. 412, 413. 21

*k.* At no time prior to the organization of the Remington-Sholes Typewriter Co., were any typewriting machines manufactured, advertised for sale, offered for sale or sold by Sholes and the Remingtons or either of them, under the name "Remington-Sholes," or any other name. They had never carried on any typewriter business and did not possess the good-will of any such business, prior to the organization of the so-called Remington-Sholes Typewriter Co. in May, 1894.

R., pp. 390-392, 397-401, 403-406, 410.

22 *l.* In the Spring of 1894, Charles Norman Fay and Franklin H. Head, two large capitalists, became interested in the model machine, etc., and an Illinois corporation was formed, the promoters selecting therefor the name "Remington-Sholes Typewriter Co."

R., pp. 406-409.

*m.* The Remingtons and Sholes became stockholders of that corporation, and for the purpose of making the stock full paid, the whole capital stock, consisting of 1,500 shares of the par value of $150,000, was issued to Sholes and the two Remingtons, in proportion to the interest, which they respect-
23 ively held in the model machine, etc.

R., pp. 406-409.

*n.* Fay was chief promoter of the corporation, and directly after its organization received one-third of the capital stock—$50,000—as compensation for his services in organizing the Company. No cash was paid by Sholes or by the Remingtons for the stock for which they subscribed.

R., pp. 407, 409.

*o.* Shortly after the corporation was organized its capital stock was increased to $250,000. This $100,000 worth of stock was taken by Fay, Head
24 and others, to furnish capital with which to start the business of the Company.

R., pp. 406, 407, 839.

*p.* While in the preliminary organization of the Company, its stock was mainly issued to the Remingtons and Sholes, nevertheless by the subsequent increase of the amount of stock and the transfer thereof, the control of the Company passed into the hands of Fay and others as appears in and by the Certificate of dissolution of the Remington-Sholes Typewriter Co.

Record, pp. 422, 835-842.

*q.* Fay personally and as trustee held a majority of the capital stock of the Company. Sholes and Carver Remington held a few shares of the stock and Franklin Remington about 250 shares thereof.

R., p. 838.

*r.* This Company first placed its typewriting mamachine upon the market under the name and designation "Remington-Sholes" in December, 1894.

R., p. 410.

*s* Neither of the Remingtons nor Sholes had previously been engaged in the typewriter business nor did either of the Remingtons at any time make any inventions or improvements in typewriters.

R., pp. 58-60, 100, 101, 412.

*t.* Fay was the principal promoter and organizer of the Remington-Sholes Typewriter Co., and after its organization became the principal stockholder thereof.

R., pp. 408, 409, 838.

*u.* That Fay and his associates knew the value of the name "Remington" at the time they selected and appropriated it, is clearly established by the surrounding circumstances and by evidence in the case.

R., pp. 447, 419. Pet,. pp. 64, 65. [redacted].

*v.* The allegation, in sub-division 3, of the petition, that Franklin Remington expended some $15,000 in the *re-construction* of the Sholes model is erroneous, as the evidence clearly establishes the fact that the model as originally constructed by Sholes was not materially changed after the Remingtons acquired their interest therein, and was not reconstructed or rebuilt before the organization of the Remington-Sholes Typewriter Co.

R., pp. 390, 391, 400, 401, 413.

28 *w.* That after the organization of the Corporation and in preparing the machine for the market some changes in details were made.

R., pp. 411, 434.

*x.* That while it is true that Zalmon G. Sholes' father was one of the early originators of improvements in typewriting machines, and Franklin Remington's father was at one time an officer and stockholder of E. Remington & Sons Corporation, it is not true that either one of them ever *personally* engaged in the manufacture or sale of typewriting machines; and Respondent further says that their association and repute, whatever it may have been
29 in connection with typewriting machines, rested with the Respondent's predecessors, and is now vested in Respondent as the successor to said typewriter business.

R., pp. 38, 43, 55, 56, 57, 60, 61, 42, 43.

*g.* That no two names could have been selected from the vocabulary of the world and applied to a writing machine, which were so well calculated to injure and divert the good will of Respondent's business as the names "Remington" and "Sholes," and the evidence in the record shows that this fact was fully appreciated and availed of by the promoters and organizers of the Remington-Sholes
30 Typewriter Co.

R., pp. 447, 419, 881, 973, 983, 889, 886.

4. That the Remington-Sholes Typewriter Co. continued to manufacture, advertise for sale and sell typewriting machines, marked, designated and advertised as the "Remington-Sholes" typewriter, until 1897 when it was reorganized as and under practically the same name, "Remington-Sholes Company."

R., pp. 436, 437, 1103, 1109.

*a.* After the re-organization and incorporation of the Remington-Sholes Typewriter Co., in 1897, the designation "Remington Sholes" was abbreviated to "Rem-Sho," but the name "Remington-Sholes" was always used on the machines in connection with the abbreviation, and was used in catalogues and advertisements and on signs, and the machines continued to be called and designated "Remington-Sholes" by dealers and agents, and continued to be known in the trade and to the public by the same designation. 31

R., pp. 1031, 1032, 1082, 1093, 1097, 524, 530, 27, 1352.

*b.* Respondent further says that the allegation of the petition (sub-division 4) that the Remington-Sholes Typewriter differed in external appearance, finish and design from the machines of Respondent is not of force, because, *first*, the ornamental bronze frame, etc., adopted and used by the Remington-Sholes Typewriter Co. was subsequently abandoned, and the machine japanned in black so that in external appearance and finish it quite closely simulated the design and finish of Respondent's machine. 32

R., pp. 555, 556.

And *secondly*, the evidence establishes the fact that the ordinary purchaser of typewriting machines relies upon the name and repute of the machine, that he is not familiar with the details of structure of writing machines and is unacquainted with their physical characteristics. That comparatively few purchasers are operators, and it is the rule in the larger cities that the business man does not even examine the machine which he purchases. 33

R., pp. 448, 449, 451, 452, 543, 544, 549, 550, 606, 607.

34 *c.* That in respect to the allegation of the petition (sub-division 4) that the Remington-Sholes Typewriter Co. and its successors and the Petitioner had at all times scrupulously sought to avoid any confusion as to the identity of their machines and business with those of Respondent, this Respondent says, that the alleged cautionary matter referred to and quoted from Petitioners catalogue was printed in said catalogues near the end thereof, which catalogue the evidence shows the public and purchasers seldom or never read. Moreover in many of said catalogues on the back side of the title page as well as in other advertisements and publications, the petitioners stated and asserted that the Remington-
35 Sholes machine was the "Only machine now made by a REMINGTON." "Strong, reliable and accurate, it represents the SECOND GENERATION of typewriter manufacturers bearing this great name." These statements were also frequently made orally by agents and dealers.

*d.* In their instructions to agents and dealers, Petitioners said: "The machine has now been fully explained and it remains with the salesman to add such other interesting facts such as the history of the Company, the connection of our Mr. Remington with this machine (Remington-Sholes) *and the relation to the old Remington Standard;* the fact that
36 this is a SECOND GENERATION of typewriter builders, that *the same standard of excellence is being maintained in the manufacture of this machine as all other goods which have been produced by the Remingtons.*" These statements, together with the frequent assertions of Petitioners' agents and dealers that the Remington-Sholes machine was the new and improved Remington and the genuine Remington typewriter, were freely circulated by agents and dealers of Petitioners to the injury of Respondent's business.

R., pp. 1197-1199, 973, 908, 909, 1028, 1029.

*e.* Furthermore the cautionary notice quoted, 37
substantially admits that the use of the name "Remington-Sholes" was calculated to confuse and mislead the public, otherwise no explanation would have been necessary. This notice like many others made by Petitioners contains misstatements of fact in that it alleges that Zalmon G. Sholes' father was the original inventor of the Remington Standard Typewriter. It is shown by the evidence in the case that he was only one of several persons who orignated the first model of the Remington machine. It is also asserted in said notice that Franklin Remington is the son of the original manufacturer of the well known typewriter which bears his name. This statement is incorrect inasmuch as the 38
Remington typewriter was manufactured and sold by E. Remington Sons Corporation, during the time that Samuel Remington, the father of Franklin Remington was connected therewith.

R., pp. 205, 206, 857, 858, 61.

*f.* The purpose of these and other untruthful statements was to associate the Remington-Sholes Co. and its product with the old Remington concern whose successor in typewriter manufacture, Respondent was and is. The intent of the Petitioners and their agents and dealers was to create in the mind of the public the belief that they were the successors to the business of the old Remington 39
concern, or that the Remington-Sholes Co. was a branch thereof and that their machine was the real Remington or the new and improved Remington Typewriter.

R., pp. 881, 973, 983, 972, 997, 999, 1000.

5. In respect to the allegations of sub-division 5, of the petition, Respondent says, that the alleged decision of the German Courts therein referred to was not introduced in evidence nor was any proof made in respect thereto; that the action was a civil proceeding by the firm of Glogouski & Co., of Berlin, against one Henry Newald of the same City under the CIVIL CODE and TRADE MARK LAWS of the

40 GERMAN EMPIRE. Glogouski & Co., were the exclusive resident dealers for Germany of Respondent's machines, and Newald was a dealer, selling the so called Remington-Sholes typewriter in Germany. Glogouski & Co., being resident dealers of Respondent's machines had, as required by the *German Trade Mark Law*, registered the name "Remington" as a trade-mark for the machines that they were selling. Newald was selling the machines of the Remington-Sholes Typewriter Co., with the name of that concern upon them. It was an AFFIDAVIT CASE. No witnesses were examined in Court or depositions taken in the usual way, nor were any of the affiants cross examined. Glogouski
41 & Co's., case was meagrely and imperfectly presented by affidavits, while Newald was furnished with sundry *affidavits* by the Remington-Sholes Typewriter Co., which not only stoutly denied Glogouski & Co's., right to use the name "Remington" upon or in connection with the sale of the typewriting machines, but also contained many other gross misstatements of fact. The Court ultimately came to the conclusion that inasmuch as Newald dealt exclusively in the goods of an AMERICAN firm which bore the name Remington-Sholes Typewriter Co., he could not under the special provisions of the GERMAN TRADE MARK LAW, in view of the convention existing between the German
42 Empire and the United States, be prevented from selling the writing machines of the Remington-Sholes Typewriter Co. The *parties* to that proceeding, the *issues* involved therein, and the *law* applicable thereto were wholly indifferent from those in the case at bar.

The decision of the German Court having arisen under the special provisions of the GERMAN TRADE MARK LAW is not of force here and cannot be availed of by the Petitioners as an authority in this Case.

Hohner v. Gratz, 50 Fed. Rep. 369; City of Carlsbad vs. Kutnow, 68 Fed. Rep. 794; S C. App. 71 Fed. Rep.

6. In respect to the allegation contained in subdivision 6 of the petition, Respondent says that the bill of complaint herein alleged that the Howe Scale Co., had been guilty of fraud and unfair competition, in that it had used the names "Remington" and "Remington-Sholes" as well as the corporate name "Remington Sholes Co." and the abbreviated name "Rem Sho" upon and in connection with the manufacture of Petitioners writing machines. 43

Record p. p. 8 & 9.

*a.* Respondent avers that the dissent of Judge Wallace, from the majority opinions of the Court of Appeals of the second circuit was in respect of *matters of fact only* and not in regard to any *legal proposition* enunciated in said opinions 44

Petition p. 66, et. seq.

*b.* That in his opinion Judge Wallace admits that "doubtless some careless purchasers have been misled and some unscrupulous dealers have traded on the resemblance imparted by the word Remington." . . . . . That "if the defendant had selected its name for the purpose of unfair competition in trade with the Complainant the question whether the collocation of the word Remington with other words did not suffice to distinguish its name from the Complainant's name would be of little importance." . . . . . 45

And again when speaking of the right of Franklin Remington to use his own name in the corporate designation, "Remington-Sholes Typewriter Co." he qualifies such right to use the same with the limitation, "provided it is (was) not chosen as a cover for unfair competition."

*c.* The learned Judge also apparently overlooked the fact that the Respondent's predecessors acquired the *whole typewriter business of E. Remington & Sons Corporation*, including the good will, trade-names and trade-marks used in connection with the manfacture and sale of the Remington typewriting machines.

46 He also apparently overlooked the fact that Respondent's predecessor registered the name "Remington" in the United States Patent Office, that it used the name "Remington" conspicuously upon the paper table of its machines, and that its machines were advertised, designated and sold as the Remington, and long prior to the organization of the Remington-Sholes Typewriter Co. had become generally known as the Remington Typewriter.

*d.* Judge Wallace also appears to have overlooked the fact that the evidence in this case establishes that the ordinary purchaser of writing machines relies upon the name "Remington" which has been
47 so long and exclusively identified with Respondent's business as to inform the public that the name upon typewriters meant that they were the product of the old Remington factory and of Respondent, and that the ordinary buyer of typewriters is unacquainted with the external appearance and physical characteristics of the machines, and in purchasing relies upon the name and repute of the machine which he desires to purchase.

*e.* The learned Judge also seems to have found that the Remington-Sholes Typewriter Co. was the successor in business of another concern of which the Remingtons and Sholes were the owners.

48 This finding or statement of fact could only refer to the Z. G. Sholes Co., which Petitioners assert in their brief *never made or sold any typewriting machines or had any business* (Petitioner's brief, p. 4), and this contention is in accordance with the majority opinion of the Circuit Court of Appeals, wherein it is said that "prior to the formation of the Remington-Sholes Typewriter Co. no machines had been sold or offered for sale. Two or more had been made as models, and the name was then changed from "Z. G. Sholes" to "Remington-Sholes," but the new name had not become associated with the machine except in the talk of the future corporators among themselves; the public

know nothing of any such name in connection with a typewriter, indeed did not know the junior Remingtons or even Sholes as a producer of typewriters."

Petition, p. 64.

*f.* Furthermore, Judge Wallace also appears to have been under the erroneous impression that the machines had been introduced to the public prior to the organization of the Remington-Sholes Typewriter Co., for he says that it was natural that those who had invented the machine and given all their time and means *in introducing it to the public* when they came to organize a corporation, . . . . . should choose their own name as a corporate name."

Petition, p. 69.

The machine was not introduced to the public prior to December, 1894 and perhaps later.

R. pp. 410, 1110.

*g.* Respondent further answering says that it is informed and believes that the decree entered by the Circuit Court of the District of Vermont was so made and entered in strict accordance with the mandate issued to said Court by the Circuit Court of Appeals as by reference to a copy thereof duly authenticated hereto annexed will more fully appear.

*h.* Respondent admits that it has furnished some of its agents and dealers with copies of the decree made and entered by the Courts below for their information and guidance, but denies that it has widely published or advertised in the United States or in foreign countries the finding of the Circuit Court and Court of Appeals that the Petitioners had been guilty of a fraudulent infringement and invasion of Respondent's rights and of an unfair and inequitable competition.

52 7. This Respondent admits that the Remington-Sholes Company assumed and conducted the defense of this action as alleged in the petition. That about the time the decision of the United States Circuit Court of the District of Vermont was handed down the Howe Scale Company gave up its agency and ceased to sell typewriters, and that shortly thereafter said Remington-Sholes Co., changed its corporate name to Fay-Sholes Co. and the name of its machine to the "Fay-Sho" typewriter; and it further says that shortly thereafter the said Franklin Remington ceased to be an employee or alleged manager of the said Fay-Sholes Co.; that he abandoned the typewriter business, and
53 removed to New York City, where he became the President and Manager of a corporation organized under the laws of the State of New York known as the Foundation and Contracting Company, and that said Remington has ever since been engaged in the business of said Company. In this connection Respondent begs leave to refer to the affidavits of Henry D. Donnelly and others, hereto annexed forming a part of this answer.

8. That in respect of the suit now pending in the United States Circuit Court of the Nothern District of Illinois, referred to in sub-division 8 of the petition, Respondent says that said cause has already
54 been disposed of by the stipulation of the parties and the order of said court, except as to the matter of an accounting, it having been stipulated and ordered that in case of an affirmance of the decree of the Circuit Court by the Appellate Court, the case should at once proceed to an accounting.

9. Respondent admits that the machines of the Fay-Sholes Co., formerly the Remington-Sholes Co., have been sold in many foreign countries, some of which are montioned in the petition, and it avers that the unfair trading and fraudulent acts and advertisements of unscrupulous agents and dealers of the Petitioner, Fay-Sholes Co., have seriously

menaced and injured its business, in that the ma- 55
chines of the said Remington-Sholes Co. now the Fay-Sholes Co. have been advertised, represented and designated, as :—

"The Remington-Sholes Typewriter."
"The Remington-Sholes Standard Typewriter."
"Remington Imperial Typewriter."
"Remington Typewriters" called "Remington-Sholes."
"New Model Remington."
"Remington Machine."
"These Genuine Remingtons made by Remington-Sholes."
"The only typewriter manufactured to-day 56
by a REMINGTON."
"It represents the SECOND GENERATION of typewriter manufactured bearing this great name."
"The only machine made by a REMINGTON."
"The New Remington-Sholes."
"The Remington-Sholes Typewriter the only machine now manufactured by Mr. Remington."
"Mr. Franklin Remington son and grand son of the old and celebrated American house, is the only member of that family 57
now engaged in the manufacture of a typewriter."

Many other statements of similar import have been made and advertised by Petitioners and their agents and dealers.

R. pp., 1027, 1042, 1044, 1114, 1116, 1197–1199, 1256, 1257, 1272, 1273, 1460, 1464, 882–885, 888–899, 901, 908, 909, 957, 958, 972, 973, 978, 979, 983, 986, 997, 1002.

58 *a.* That no suits have been threatened in foreign countries as alleged, except in cases where Petitioners' agents, and dealers were offering for sale or advertising for sale the Remington-Sholes Typewriter, as and for Respondent's machines, or in cases where they were attempting by unfair means to filch the good will of Respondent's trade and business, which is a large and very valuable one in the countries referred to in the petition.

*b.* That the suit pending against the alleged dealer in Rotterdam, Holland was instituted for the purpose of compelling said dealer to desist from the use of the name "Remington", which he used
59 *alone* on his sign and in a manner that was calculated to mislead the public, and to palm off the "Fay-Sholes" machines as and for Respondent's.

*c.* Respondent further says that it is informed and believes that if the Petitioner, Fay Sholes Co., is in nowise responsible or accountable for the acts and publications of its foreign agents and dealers. then the allegations contained in sub-division 9, of the petition are wholly irrelevant and immaterial, and furnish no ground whatever for the interposition of this court in respect of Petitioners foreign business.

60 10. Respondent is informed and believes that the Petitioners misinterpret and misapprehend the findings of the Court of Appeals as set forth in the majority of opinion of said Court; and it avers and insists that said Court held and found that the Petitioner, Howe Scale Co. had been guilty of a fraudulent infringement and invasion of the rights of Respondent, and had inaugurated an unfair and inequitable competition in business.

Petition pp. 49, 51, 54, 62, 65, 73.

The Courts below held that in organizing the Remington-Sholes Typewriter Co., the corporators

thereof intentionally selected the name "Reming- 61
ton" in order to compete with Respondent in its typewriter business and to divert Respondent's trade by confusing the identity of the products of the Remington-Sholes Typewriter Co. with Respondent, and that the Petitioner Remington-Sholes Co., and its predecessor chose the name "Remington" unnecessarily and for the purpose of unfair competition. This was in substance and effect the finding of both the Circuit Court and the Circuit Court of Appeals. Both Courts found that the Remington-Sholes Typewriter Co. was formed with a deceptive name, and that the name "Remington" was selected and adopted for the purpose of fraud and unfair competition; and Respondent further avers upon 62
information and belief that the question of whether the Remingtons might not have given their names to a corporation in certain circumstances and under certain conditions was not an issue in this case inasmuch as the Courts below found as a fact that the name "Remington" was taken by the Remington-Sholes Typewriter Co. and the petitioners for the purpose of fraud and to get the advantage of the great reputation which had attached itself to this Respondent and its product.

11. This Respondent further answering, says that the designation by personal names of some corporations that are engaged in the manufacture and sale 63
of typewriters is not peculiar to typewriter manufacture, nor is it material herein that some typewriting machines upon the market bear the names of the inventors thereof and others those of the the manufacturers of such machines. Suffice it to say that no custom could justify or sanction the fraudulent selection and use of Respondent's trade-name by Petitioners.

*a.* And Respondent further says that most of the large corporations in this country have adopted and use impersonal corporate names, and that many corporations engaged in the manufacture and sale

64 of typewriting machines have adopted and used such corporate names for their business. For example, corporations have been organized for the manufacture and sale of typewriting machines under the following names:

American Typewriter Co.
American Writing Machine Co.
Columbia Typewriter Mfg. Co.
Manhattan Typewriter Co.
Sun Typewriter Co.
Union Typewriter Co.
Union Writing Machine Co.
Hartford Typewriter Co.
National Typewriter Co.
65 Standard Typewriter Co.
Standard Typewriter Mfg. Co.
Monarch Typewriter Co.

And others might be added to this list.

*b.* And further answering, Respondent says that many corporations and concerns have manufactured and sold their products under impersonal names, as for example:

"Automatic" typewriter.
"American" typewriter.
"Boston" typewriter.
"Bar-Lock" typewriter.
66 "Caligraph" typewriter.
"New Century" typewriter.
"National" typewriter.
"Chicago" typewriter.
"Crown" typewriter.
"Columbia" typewriter.
"Commercial Visible" typewriter.
"Duplex" typewriter.
"Empire" typewriter.
"Hartford" typewriter.
"International" typewriter.
"Ideal" typewriter.
"Keystone" typewriter.

"Manhattan" typewriter. 67
"Monarch" typewriter.
"Pittsburg Visible" typewriter.
"Peoples" typewriter.
"Rapid" typewriter.
"Sun" typewriter.
"Union" typewriter.
"Victor" typewriter.
"World" typewriter.
"Waverly" typewriter, etc.

*c.* Respondent, further answering, says that while it is true that the name "Remington" had acquired repute in the gun industry before the advent of Respondent's typewriting machines, it is equally 68
true that Respondent and its product had, under the name "Remington," achieved a world-wide reputation before the Remingtons and Sholes lent their names to the Remington-Sholes Typewriter Co., as heretofore alleged.

R., pp. 72, 73, 79, 95, 96, 97, 211, 212.

*d.* That whatever of value, in connection with typewriting machines, attached to the name of the father of Zalmon G. Sholes was associated with and became vested in Respondent's predecessors; and Respondent denies that the adoption of the name Remington-Sholes Typewriter Co. or Remington-Sholes Co. as corporate names, or the name "Rem- 69
ington-Sholes" or "Rem-Sho" as a name for their product was reasonable, honest or fair, and avers that the name "Remington" was selected and appropriated without right as against Respondent and for the purpose of fraudulent and unfair competition.

12. And Respondent, further answering said petition upon information and belief, denies that the said Remingtons had a right to lend or bestow the name "Remington" upon said corporation, organized by a body of associates and named by pro-

70 moters for the purpose of getting the advantage of the great reputation which had attached itself to Respondent's product and business; and Respondent avers upon information and belief that the decision and findings of the Court of Appeals was in effect that the name "Remington" was selected and adopted by the Petitioners and their predecessor for the purpose of fraud and unfair competition, and Respondent submits that no custom of trade could sanction the taking and use of Respondent's trade-name for the purpose of getting the benefit of its reputation and of filching the good will of its business.

71 13. Respondent, further answering, says that if the Petitioners herein have a right to bring this cause to this Court by an appeal from the decision of the Circuit Court of Appeals for the Second Circuit, as alleged in said petition, then a writ of *certiorari* such as is asked for herein, should be denied.

*In re* Tampa Suburban Ry. Co., 168 U. S., 583.

Respondent further says that it is advised and believes that the allegation of the petition that a much more full and adequate measure of relief may be afforded by *certiorari* than by appeal, is erroneous, as a case removed by *certiorari* is considered 72 and determined the same as if it had been carried by appeal or writ of error to this Court.

Hubbard *vs.* Todd, 171 U. S., 474.

14. Respondent, further answering, denies upon information and belief, that the cases cited and referred to in sub-division 14 of the petition or any other decision of this Court, authorizes the Petitioner's predecessor or the Petitioners to take, appropriate or adopt Respondent's trade-name, "Remington," for the purpose of inaugurating an unfair and fraudulent competition in business, and

avers that the Courts below held and found that the 73
Petitioner's predecessor and Petitioners had adopted and used the name "Remington" for purposes of fraud, and therefore enjoined the use thereof by the Howe Scale Co.

15. Respondent, further answering, says that the evidence referred to in sub-division 15 of the petition relates to advertisements and representations of agents and dealers, and among others to some in the foreign countries mentioned and referred to in sub-division 9 of the petition; that the typewriting machines of the Remington-Sholes Co., now Fay-Sholes Co., and those of Respondent were and are sold in competition in the markets of said foreign 74
countries, and that one of the questions considered by the Circuit Court in this case was whether or not the use of the name "Remington" upon Petitioner's machines and in their business was calculated to divert Respondent's trade or likely to mislead the ultimate purchaser, either in this country or in any foreign countries where the machines were offered for sale and sold in competition with Respondent's. That this evidence related to machines emanating from the Remington-Sholes Co., now the Fay-Sholes Co., and the real defendant in this action, which machines bore the name "Remington," placed there by the Remington-Sholes Co. And Respondent avers that the evidence was relevant as showing or 75
tending to show the effect upon Respondent's trade of putting the machines of the Remington-Sholes Co. into the markets of the countries named in sub-division 9 of the petition, or elsewhere, with the names "Remington-Sholes" and "Remington-Sholes Co." upon them, and advertising for sale, offering for sale and selling them in competition with Respondent's machines, everywhere known as the "Remington" typewriter, and its business as the Remington Typewriter Co.

Petition, pp. 48, 49; R., pp. 979, 661, 896, 786.

76 *a.* And Respondent further avers that the evi dence herein shows that the Remington-Sholes Co. put its machines into the hands of agents and dealers knowing that they were calculated to be used fraudulently by them to mislead and deceive the ultimate purchaser.

Petition, pp. 64, 65.
R., pp. 419, 424, 426, 447, 805, 806, 1444.

*b.* Respondent, further answering, upon information and belief says that whether the lower Courts admitted or rejected the testimony referred to in sub-division 15 of the petition is not material, as there was abundant other competent evidence in
77 the case to sustain the findings and the decree of the Courts below.

16. In answer to sub-division 16, of the petition Respondent says that it is informed and believes that there is no conflict between the decision of the German Imperial Supreme Court and that of the Court of Appeals of the second circuit; that said German decision was predicated upon the special Trade Marked Laws of Germany, and the particular facts and circumstances set forth in the *affidavits* of the parties to that proceeding, and that foreign adjudications as respects *torts* are not binding upon the courts of this country, and the grant-
78 ing of an injunction depends in part upon circumstances which vary in different jurisdictions.

*a.* Respondent further answering says that if the Petitioners can invoke the jurisdiction of this Court to protect the foreign trade of the Fay-Sholes Co., which they allege is in the hands of independent dealers, it would seem to follow that the Courts below had the right to consider the actions and doings of such foreign dealers for the purpose of determing whether or not they were likely to mislead and deceive the ultimate purchaser and palm off Petitioner's machines as and for Respondent's.

*b.* That the questions at issue in the case pending 79
in the United States Circuit Court for the Northern District of Illinois, except as to the matter of accounting, are under the stipulation made and order entered therein already determined by the decision of the Court of Appeals of the second circuit, and hence there is no danger of a multiplicity of suits as alleged in said petition.

*c.* Respondent is informed and believes that the question whether or not one can have the right to the exclusive use of a personal name as a trade mark was not an issue in this cause or determined by the Courts below. That the Courts below did, however, hold and find that the Petitioners had in 80
connection with the sale of typewriting machines made use of the name and designation "Remington-Sholes" and "Rem-Sho," and had sold and caused the typewriting machines of the Petitioners to be advertised for sale, offered for sale, and sold and delivered, by word of mouth and otherwise, under the name of "Remington-Sholes" typewriters and "Rem-Sho" typewriters.

And further that the sale by Petitioners of such typewriting machines under the name of and as "Remington-Sholes" typewriters constituted a fraudulent infringement and an invasion of the rights of Respondent and an unfair and inequitable competition in business. 81

Petition, p. 73.

*d.* Respondent denies upon information and belief that there is anything in the decisions of this Court in conflict with the decision and findings of the Circuit Court of Appeals, to-wit, that a body of associates who organize a corporation for manufacturing and selling a particular product are not lawfully entitled to employ as their corporate name in that business the name of one of their number, when it appears that such name was intentionally selected in order to compete with an established

82 concern under a similar name engaged in a similar business, and to divert the others trade to themselves by confusing the identity of the product of the competing concerns and leading purchasers to buy those of one for those of the other.

*e.* Respondent further avers that the allegation of the Petitioners that even if the Respondent were alone entitled to use the name "Remington" as a trade mark for typewriting machines, nevertheless Petitioners have not trespassed upon such right, since they have used only the names Remington-Sholes and Remington-Sholes Company, and have never used the name "Remington" alone, is not
83 of force, for the reason that the reports are full of cases where bills have been sustained for the infringement of one of several words of a trade-mark or where a trade-name has been used in connection with other words or names. Among other cases may be cited:

Saxlehner *vs.* Eisner & Mendelson Co., 179 U. S., 19, 33.

Menendez *vs.* Holt, 128 U. S., 514.

Wotherspoon *vs.* Currie, L. R. 5 H. L., 508.

Newman *vs.* Alvord, 51 N. Y., 189.

Amoskeag Mfg. Co. *vs.* Spear, 2 Sandf., 599.

84 Montgomery *vs.* Thompson, H. L. (1891) A. C., 217.

Manchester Brewery Co. *vs.* North Cheshire & Manchester Brewery Co., H. L., 15 Times, L. R., 110.

*f.* In the case at bar the Circuit Court held and found that connecting the name "Sholes" with Remington in the business of and on the machines would not, or might not, adequately indicate to a purchaser, who had known or heard of the Remington typewriters and wanted one, that these were not the original Remingtons such as were

wanted. The name, although linked with Sholes, would indicate Remington connection in typewriter production and imply the original manufacture. 85

Also the Circuit Court said: "The ultimate purchasers would be led to think that the addition of the name 'Sholes' was a new style of the old machine coming from the same source."

The Circuit Court of Appeals speaking by Judge Lacombe, said: "The defendant is the Remington-Sholes Co.; it marks its machines 'Remington-Sholes' and 'Rem-Sho,' and there can be no doubt upon the record that the use of the name "Remington" helps the sale of machines and induces many purchasers to suppose that such machines are the product of the old establishment at Ilion." 86

And, again the same Court said: "We have no doubt whatever that the name Remington was chosen because it was expected that it would naturally lead the public to suppose that the new corporation was either the *successor* or some *branch* of the old concern of which the Appellant's brief observes: 'The name Remington was admittedly a by-word for good workmanship the world over.'"

In the dissenting opinion of Judge Wallace it is admitted that: "If the defendant had selected its name for the purpose of unfair competition in trade with the complainant (a fact found by the Circuit Court and the Court of Appeals), the question whether the collocation of the word Remington *with other words* did not suffice to distinguish its name from the complainant's name would be of little importance." 87

*g.* Respondent further answering says that the allegation of the petition that the use of, the names of the Remingtons in the corporation—Remington-Sholes Typewriter Co., etc., in which they were stockholders, etc., was an ordinary, fair and reasonable use, and one sanctioned by long established custom, is denied by Respondent and is wholly displaced by the findings and decisions of the Courts

88 below, which found and held, substantially, that the name "Remington" was intentionally selected and used, in said corporate name and upon Petitioners product, in order to compete with Respondent and for the purpose of diverting its trade and to confuse the identity of the products and lead purchasers to buy Petitioners machines as and for Respondent's.

*h.* Respondent further says that no custom could justify or sanction the intentional adoption and use by Petitioners of its trade-mark or trade-name for purpose of diverting its trade and palming off the products of the Petitioners as and for Respondent's.

89

*i.* And Respondent further answering says that it does not admit that there exists any conflict in the decisions of the various United States Circuit Courts and State Courts in respect of the right of an individual to bestow his name upon a corporation as alleged in said petition. But even if there were conflict it is informed and believes that the matter referred to in the petition was not and is not an issue in this case, nor was it the ground of decision of the Courts below. That said Courts based their decisions and findings upon the fact established in this cause that the Corporators of the Remington-Sholes Typewriter Co. intentionally
90 and fraudulently chose the name "Remington" for the purpose of unfair competition in business and to get the advantage of the world-wide reputation of the name "Remington" in connection with Respondent's business and product.

Wherefore Respondent respectfully submits that Petitioner's application for a Writ of *Certiorari* in this case should be denied.

WYCKOFF, SEAMANS & BENEDICT.

By J. F. McCLAIN,

Secretary.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.: 91

J. F. McClain, being duly sworn, says that he is the Secretary of Wyckoff, Seamans & Benedict, the Respondent herein; that he has read the foregoing answer and knows the contents thereof, and that the facts therein stated are true to the best of his information and belief.

J. F. McCLAIN.

Subscribed and sworn to before me
this 9th day of November, 1903.

H. C. COLEMAN,
[SEAL] Notary Public, Kings Co., N. Y. 92
Certificate filed in N. Y. Co.

93

94

## Exhibit A.

MANDATE CIRCUIT COURT OF APPEALS.

UNITED STATES OF AMERICA, SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA.

To the Honorable the Judges of the Circuit Court of the United States for the district of Vermont.

GREETING:

Whereas, lately in the Circuit Court of the United States for the District of Vermont, before you, or some of you, in a cause between Wyckoff, Seamans & Benedict, and the Howe Scale Company,
95 a decree was entered in the office of the Clerk of said Court on the 14th day of August, 1901, in the words and figures following, to-wit:

"This cause coming on to be heard upon the pleadings and proof and after hearing Messrs. Henry D. Donnelly and Charles E. Mitchell, counsel for the Complainant, and James H. Pierce and Geo. P. Fisher, Jr., counsel for the defendant and due deliberation having been had thereon, it is ordered, adjudged and decreed, and the Court doth hereby order, adjudge and decree as follows, namely:

1. That since about the year 1873 the complainant
96 and its predecessors have been engaged in the manufacture and sale of typewriting machines which became well and favorably known and were marked and designated "Remington" machines.

2. That said writing machines were put upon the market by complainant and its predecessors and introduced, advertised for sale and popularized in this country and in foreign countries under the name of "Remington" and "Remington Typewriter" by which names they came to be widely known and identified by purchasers and the public, and which before the acts of the defendant, and its principal, "Remington-Sholes Company" in the

bill of complaint mentioned, had for many years 97
been continuously and exclusively used to designate and identify complainant's machines.

3. That prior to the acts complained of the complainant acquired and succeeded to the typewriter business, founded by E. Remington & Sons, including franchises, trade marks and good will thereof, and said business of manufacturing and selling typewriting machines was continued and largely increased and an important good will created and existed which was a source of great profits to complainant.

4. That the defendant Howe Scale Company of 98
1886, a corporation existing under the laws of the State of Vermont, has made use, in connection with the sale of typewriting machines, manufactured by the Remington-Sholes Company, a corporation existing under the laws of the State of Illinois, of the name and designation "Remington-Sholes" and "Rem-Sho," and has sold and caused the typewriting machines of said "Remington-Sholes Company" to be advertised for sale and to be offered for sale and sold and delivered by word of mouth and otherwise, under the name of "Remington-Sholes" typewriters and "Rem-Sho" typewriters.

5. That the sale by the defendant "Howe Scale 99
Company of 1886" of typewriting machines manufactured by or for said "Remington-Sholes Company" under the name of or as "Remington-Sholes" typewriters, or "Rem-Sho" typewriters, constitutes a fraudulent infringement and invasion of the rights of the complainant and an unfair and inequitable competition which equity will restrain.

6. That at the time this action was commenced the defendant "Howe Scale Company of 1886" was the general agent of the "Remington-Sholes Company" for the United States and that said last

100 named Company agreed to pay and has paid all expenses incident to the defense thereof, and agreed to protect and save harmless said defendant with respect thereto.

7. And it not appearing that the defendant as such agent has received any profits, gains and advantages which have arisen or accrued to it from the infringement of the said trade-name and designation "Remington," by using or selling typewriting machines having thereon the name "Remington" or the abbreviation "Rem" as the name or part of the name of said writing machines, and an account thereof is denied without prejudice to any
101 right of the complainant to recover the same of the principal, the "Remington-Sholes Company."

8. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein perpetually enjoining the defendant "Howe Scale Company of 1886," its officers, clerks, attorneys, agents, servants and workmen, and all persons acting in privity with it or them, or claiming through or under it or them, from in any manner whatsoever making use of the designation "Remington" or "Rem" as the name or part of the name of any typewriting machine whatsoever manufactured by said Remington-Sholes Company, or by
102 defendant, or by any person or concern, and from selling, offering, exposing or advertising for sale by means of signs, show cards, catalogues, circulars, publications, advertisements, or by word of mouth, or in any manner whatsoever, typewriting machines manufactured by said "Remington-Sholes Company," or by defendant or any person or concern under the name of or as "Remington-Sholes" or "Rem-Sho," or by any designation of which the word "Remington" or the abbreviation "Rem" shall constitute a part.

9. And it is further ordered, adjudged and decreed that an injunction be forthwith issued herein

perpetually enjoining the said defendant Howe Scale Company of 1886, its officers, clerks, attorneys, agents, servants or workmen, and all persons acting in privity with it or them, or claiming through or under it or them, from in any manner whatsoever making use of the word "Remington," or the abbreviation "Rem" as the whole or as a part of any name or designation whatsoever, which shall be marked upon or affixed or applied by any means to typewriting machines manufactured or sold by the said "Remington-Sholes Company," or by defendant or any person or concern, and used by it or them in connection with the manufacture and sale of its or their writing machines and to distinguish and identify the same. 103 104

10. And it is further ordered, adjudged and decreed that the said complainant do recover of the defendant its costs, charges and disbursements in this suit to be taxed by the Clerk of this Court, and that in default of the payment of the same the complainant have execution therefor, "Hoyt H. Wheeler," as by the inspection of the transcript of the record of the said Court which was brought into the United States Qircuit Court of Appeals for the Second Circuit, by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and three, the said cause came on to be heard before the United States Circuit Court of Appeals for the Second Circuit, on the said transcript of record, and was argued by counsel: 105

On consideration whereof it is hereby ordered, adjudged and decreed

That the decree of said Circuit Court be and it hereby is reversed without costs, and cause remanded with instructions to decree in favor of complainant only as to the name "Remington."

106 You, therefore, are hereby commanded that such further proceedings be had in said cause, in accordance with the decision of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 24th day of April, in the year of our Lord one thousand nine hundred and three.

(L. S.) WM. PARKIN,
Clerk of the United States
Circuit Court of Appeals,
for the Second Circuit.

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CLERK'S OFFICE, U. S. CIRCUIT COURT,
DISTRICT OF VERMONT.

BURLINGTON, October 28th, 1903.

I hereby certify that the above and foregoing is a true copy of the original hereof now remaining on file in my office.

(L. S.) (Sgd.) GEO. E. JOHNSON,
Clerk.

108

## Exhibit B.

Affidavit H. D. Donnelly.

SUPREME COURT OF THE UNITED STATES.

October Term, A. D., 1903.

How Scale Company of 1886 and Fay-Sholes Company,
Petitioners.

*vs.*

Wyckoff, Seamans & Benedict,
Respondent.

United States of America,
State of New York,
County of New York, } ss.

Henry D. Donnelly, being duly sworn deposes and says that he resides in the Borough of Brooklyn, City of New York, and is Respondent's attorney and one of its counsel herein; that he knows Franklin Remington referred to in the petition herein, and knew him prior to November 1901; that in the year 1892, to wit:—about the month of September, he became cognizant of the fact that a corporation had previously been formed under the laws of the State of New York, known as the Foundation and Contracting Co. That his attention was drawn to this matter by the reason of the following facts and circumstances:— One Jules Breuchaud was and is the owner of Letters Patent of the United States relating to certain inventions and improvements in the construction of supports for walls, etc; that in or about the month of September 1892, deponent was informed by said Breuchaud that the said Foundation and Contract-

112 ing Co., and another concern were infringing his patent in the construction of a foundation for a building in the City of New York. After some correspondence and negotiations, deponent in behalf of the said Jules Breuchaud prepared a bill of complaint and suit was brought in the United States Circuit Court, for the Southern District of New York against the said Foundation and Contracting Co., *et al*, and the said defendants subsequently appeared in the suit and filed their answer therein. On an investigation of the circumstances attending the infringement of said patent and in the preparation of the bill of complaint, deponent acquired knowledge of the fact that the Foundation and Con-
113 tracting Co. was a corporation organized under the laws of the State of New York, and that the Cirtificate of incorporation was filed and recorded in the County Clerk's Office of the County of New York on the second day of April 1902.

That the three persons named Corporators and Directors in the said Certificate are Franklin Remington, Edwin S. Jarrett and Daniel E. Moran. and that the residence of Franklin Remington is stated to be 210 West 44th, Street, New York City. That the principal place of business of said corporation is stated to be located in the City and County of New York and that the object for which said Company was formed is stated to be to design, con-
114 struct, enlarge, extend, repair, complete, take down or remove or otherwise engage in any work upon bridges, piers, docks, foundations, etc.

That subsequent to the filing of bill of complaint in said suit, said Foundation and Contracting Co., made and filed its answer therein which answer was subscribed "Foundation and Contracting Co., by Franklin Remington, President," and deponent knows by correspondence with said Company and by personal investigation that the person who subscribed said answer as "Franklin Remington President" is the same Franklin Remington who is referred to in the petition in this case. That de-

ponent now has in his possession a letter which he received from the said Foundation and Contracting Co., relating to the matter for which suit is brought, bearing date of December 1, 1902, the printed heading of which letter is as follows: 115

DANIEL E. MORAN, C. E. EDWIN S. JARRETT, C. E.
FRANKLIN REMINGTON.

Foundation and Contracting Co.
35 Nassau Street,
Telephone: Cortlandt 3956 New York, Dec. 1, 1902.
HENRY D. DONNELLY.

Subscribed and sworn this Seventh day of November 1903. } 116

Katherine V. Donovan,
Notary Public, Westchester Co.
Certificate Filed in N. Y. Co.

117

118 **Exhibit C.**

Affidavit of H. E. HATCH.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1903.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,
Petitioners,

*vs.*

119 WYCKOFF, SEAMANS & BENEDICT,
Respondent.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
County of New York. } ss:

HAMLIN E. HATCH, being duly sworn, deposes and says that he resides in the City of Newark, N. J., and is now engaged in the sale of typewriting machines in the City of New York. That he was formerly in the employ of the Remington-Sholes Company. That deponent first entered the
120 service of the Remington-Sholes Company, in the Spring of the year 1898, and continued in the service of said corporation as a typewriter salesman and organizer of agencies and dealers until the year 1900, when he left the service of said Company. That in the year 1902, and after the corporation had changed its name to Fay-Sholes Company, he again entered the service of said Company, and continued therein until January 1st, 1903. That during such employment he became acquainted with Franklin Remington upon whom he recently made a social call and found in an office located at No. 35 Nassau Street, New York City. That the entrance door of said office bore the name "Foundation and Con-

tracting Company." That deponent had a short interview with Mr. Remington at said office No. 35 Nassau Street, and knows the person whom he there met to be the same person Franklin Remington, who was formerly connected with the Remington Sholes Company of Chicago. 121

HAMLIN E. HATCH.

Subscribed and sworn before me this 10th day of November, 1903.

KATHERINE V. DONOVAN,
Notary Public,
Westchester Co.,

[SEAL.]

122

Certificate filed in N. Y. Co.

123

124

## Exhibit D.

Affidavit of JOHN H. MASON.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D., 1903.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,

125 Petitioners,

*vs.*

WYCKOFF, SEAMANS & BENEDICT,

Respondent.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.

JOHN H. MASON, being duly sworn, deposes and says that he resides at No. 25 East 104th Street, in
126 the Borough of Manhattan, City, County and State of New York. That on the 6th day of November, 1903, he called at the office of the Fay-Sholes Company, located at No. 300 Broadway, New York City, N. Y., and there made inquiry for Mr. Franklin Remington. That deponent was informed by a lady who was apparently in charge of the office that Mr. Franklin Remington was not there but was President of the Foundation and Contracting Company located at No. 35 Nassau Street, and that said company was erecting a building opposite to the office of the Fay-Sholes Company on Broadway, New

York City. She also stated that Mr. Remington 127
was not often at the office of said company. During deponent's visit to the office of the Fay-Sholes Company, he was also informed by one F. W. Payne, a salesman in the service of said company, that while Mr. Remington was still Vice-President of the Fay-Sholes Company, he took no active part in the management of the business at No. 300 Broadway. Deponent also visited the building known as No. 35 Nassau Street, New York City, and there ascertained from inquiry that the Foundation and Contracting Co. had offices in said building, and was also informed by employees of the building—hall man and persons who ran the elevators—that Franklin Remington was generally at the office of the 128
Foundation and Contracting Co., in said building, on business days, during the usual business hours. Deponent consulted a buiness directory of the City of New York, for the year 1903, and found that Franklin Remington was named therein as President and Director of the Foundation and Contracting Co., and also Vice-President and Director of the Wilson Refrigerating Machine Co., No. 478 Pearl Street, New York City, and was informed by a gentleman apparently in charge of said office, that Mr. Remington was not then there but that he came there on Monday, Wednesday and Friday morning of each week, and that he could always be found at the Foundation 129
and Contracting Co. office at No. 35 Nassau Street, New York City, as he was there all day. That deponent learned by inquiry at the office of Messrs. Geo. R. Read & Co., of No. 60 Liberty Street, New York, who as deponent is informed and believes are agents for the building at No. 35 Nassau Street, that the Foundation and Contracting Co. have been tenants in said building for about two years.

And deponent further says that he also ascertained from a personal visit to Greenwich, Conn., and inquiry there that Mr. Franklin Remington now

130 resides at No. 73 North Street, Greenwich, and has lived there for about two years.

JNO. H. MASON.

Subscribed and sworn this 10th day of November, 1903.

KATHERINE V. DONOVAN,
[SEAL] Notary Public,
Westchester Co.,

Certificate filed in N. Y. Co.

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# Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

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WYCKOFF, SEAMANS & BENEDICT,
Petitioner,

*vs.*

HOWE SCALE COMPANY OF 1886 and
FAY-SHOLES COMPANY,
Respondent.

**Brief for Petitioner.**

## Statement of Case.

This is a petition for a writ of *certiorari*, requiring the Circuit Court of Appeals, for the second circuit, to certify the record and proceedings in the case of Wyckoff, Benedict & Seamans *vs.* Howe Scale Company of 1886 to this court, to the end that it may review and correct the errors complained of in the petition herein. The facts in this case are fully stated in a brief recently filed with this court, by the petitioner herein, in opposition to an application for a writ of *certiorari* by the respondent herein, and hence it is not deemed necessary to repeat here what is there set forth in detail.

The application of the respondent herein for a writ of *certiorari* was hitherto granted by this court.

## Points.

I. On the hearing of this case on the petition of the Howe Scale Company of 1886 and the Fay-Sholes Company, this court will confine its consideration of the case and pass only on the errors assigned in said petition of the petitioner above named unless *certiorari* is granted on the petition herein.

Hubbard *vs.* Tod 171 U. S., 474.

II. The petitioner's application for a writ of *certiorari* herein should be granted, and, among others, for the following reasons:

1. There is a conflict of decision between the Circuit Court of the district of Vermont and the Circuit Court of Appeals of the second circuit in respect to the abbreviated or short name "Rem-Sho." Among other things, Judge Wheeler in his opinion said: "The long name Remington-Sholes got shortened into Rem-Sho in writing and speech in conducting the defendant's business, which was well understood to be an abbreviation of the full name. The defendant has put the abbreviation upon the machines in place of the full name; and claims that this, at least, is so different from the name Remington, as used by the plaintiff and its predecessors, that it can, and does, not amount to any representation that the machines are Remington machines. If this short name had been the one first used there would be much plausibility in this argument; but, following Remington-Sholes as it has in use, it has become a well-known short representation of what the long name it stands for represented, and of itself now amounts to a wrongful representation of the source of the defendant's machines."

In the decree entered by the Circuit Court the abbreviation "Rem" was suppressed. The Circuit Court of Appeals, speaking through Judge Lacombe, said: "The arbitrary name 'Rem-Sho,' however,

does not seem to us to be sufficiently like 'Remington' to be by itself a reasonable cause of confusion. The decree, therefore, is reversed, without costs, and cause remanded, with instructions to decree in favor of complainant only as to the name 'Remington."

2. Suit is now pending in the United States Circuit Court for the northern district of Illinois, wherein the petitioner, Wyckoff, Seamans & Benedict, is complainant, and the Remington-Sholes Company is defendant. This action was brought to restrain the use by defendant of the name "Remington" and abbreviation "Rem" upon typewriting machines and in connection with the sale thereof. Under the stipulation of the parties to that suit, and the order of the Illinois Court based thereon, the Remington-Sholes Company is concluded and bound by the decision and decree of the Circuit Court of Appeals of the second circuit in respect to the use of the name Remington upon typewriting machines, but its right to use the abbreviated name "Rem-Sho" is still an open question in the Illinois case.

It is, therefore, submitted that a full consideration of this case by this honorable Court will tend to prevent costly and undesirable litigation and settle all questions in controversy between the parties to this action.

3. This Court has already granted respondents motion for a writ of *certiorari*, and the whole record and proceedings of the courts below will be before it at the hearing of this case, and little, if any, additional labor will be imposed upon this Court if it shall grant this application, hear the whole case and thereby promote justice to all interested therein.

4. The Circuit Court of Appeals for the second circuit erred in holding that the short name "Rem-

Sho" was not sufficiently like "Remington" to be likely to cause confusion, for the reason, among others, that the abbreviated or short name "Rem-Sho" had theretofore always been used in connection with "Remington-Sholes," and to use the abbreviation "Rem-Sho" is to all intents and purposes to use the long name "Remington-Sholes."

5. The proofs in the record fully sustain the opinion of the Circuit Court wherein it is said that "the long name 'Remington-Sholes' got shortened into 'Rem-Sho' in writing and speech in conducting the defendant's business, which was well understood to be an abbreviation of the full name."

6. The proofs also fully establish the fact that the short or abbreviated name "Rem-Sho" followed the use of the name "Remington-Sholes," and the latter name was always used on the machines, in all advertising *media*, and upon signs and orally as a designation for respondent's typewriting machines.

For the foregoing reasons it is respectfully submitted that the petition of Wyckoff, Seamans & Benedict for a writ of *certiorari* should be granted to the end that the whole controversy pending between the parties to this action may be fully considered and determined by this Court.

EDMUND WETMORE,
HENRY D. DONNELLY,
of Counsel for Petitioner.

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

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WYCKOFF, SEAMANS & BENEDICT,
Petitioner,

*vs.*

HOWE SCALE COMPANY of 1886 and
FAY-SHOLES COMPANY,
Respondents.

## Reply Brief for Petitioners.

The United States Circuit Court in and for the district of Vermont decreed in favor of the Petitioner herein in respect of the name "Remington" and abbreviation "Rem" in the short name "Rem-Sho."

The United States Circuit Court of Appeals for the Second Circuit modified the decree of the Circuit Court and directed it to decree in favor of the Petitioners, Wyckoff, Seamans & Benedict, only as to the name "Remington."

In the dissenting opinion of Judge Wallace, no reference whatever is made to the abbreviated name "Rem-Sho."

This motion is based upon the record hitherto filed in this Court by Respondents and upon which their application for writ of *certiorari* has been granted.

The sole purpose of the Respondents is to secure a reversal of the decision of the Circuit Court of Appeals in respect of the name "Remington."

The desire and purpose of the Petitioner herein is to obtain leave of this Court to present the whole case—"Rem-Sho" as well as "Remington"—to it, to the end that all questions at issue between the parties to this action may be finally determined.

The reasons—save one—assigned by the Respondents in their brief in opposition to the granting of the prayer of the petition herein, are in substance and effect the same as those pressed upon the attention of this Court by Petitioner in opposition to the application of the Respondents for a writ of *certiorari*.

In opposition to Respondents' application we urged that this Court took jurisdiction of *certiorari* only in cases of peculiar gravity and importance or to secure uniformity of decision, and contended that the case presented did not fall within that category.

We further contended that the crucial question in the case was one of *fact* and not of law. This Court everruled our contentions in opposition to Respondents' application and granted a writ of *certiorari* in accordance with the prayer of Repondents' petition. In their brief in opposition to this application, subdivisions (a), (c) and (d) thereof, the Respondents have in substance adopted and repeated our previous contentions, and have cited *the same cases* in opposition to Petitioner's application. We respectfully submit that if our contentions hitherto made were not of force in resisting the application of the Respondents, those contentions ought not to be of any force or effect here.

In reply to subdivision (b) of Respondents' brief, we say that in the Illinois case Respondents' stipulated to abide the event of the decision by the Circuit Court of Appeals of the Second Circuit, and to be bound thereby, but that this Petitioner entered into no stipulation whatever in respect to that case.

All questions at issue in the Illinois case are now open for determination in so far as this Petitioner is concerned, and in the absence of any controlling decision by this Court there is no rule of comity which deprives the Illinois Courts from considering and determining the whole case if the Petitioner shall desire to be heard thereon.

Stover Mfg. Co. *vs.* Mast, Foos & Co., 89 Fed. Rep., 333; S. C. 177 U. S., 485.
Welsbach Light Co. *vs.* Cosmopolitan Incandescent Light Co., 104 Fed. Rep., 83, 84, 85.

We respectfully submit that the prayer of the petitioner herein should be granted.

EDMUND WETMORE,
HENRY D. DONNELLY,
Attorney and of Counsel for Petitioner.

FILE COPY.

# Supreme Court of the United States

OCTOBER TERM, 1904

Office Supreme Court U. S.
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JAMES H. MCKENNEY,
Clerk

HOWE SCALE COMPANY OF 1886 AND PAY-SHOLES COMPANY,
*Defendants-Appellants,*

vs.

WYCKOFF, SEAMANS & BENEDICT,
*Complainant-Appellee.*

No. 130

## Brief of Argument for the Complainant-Appellee

EDMUND WETMORE,
HENRY D. DONNELLY,
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*Counsel for Appellee.*

ANDREW H. KELLOGG CO., Printers, New York. 1905.

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# Supreme Court of the United States,

OCTOBER TERM, A. D. 1904.

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HOWE SCALE COMPANY OF 1886 and FAY-SHOLES COMPANY,
Defendant-Appellants,

*vs.*

WYCKOFF, SEAMANS & BENEDICT,
Complainant-Appellee.

No. 130.

## BRIEF FOR APPELLEE, WYCKOFF, SEAMANS & BENEDICT.

### Statement of Case.

This case is brought to this Court on petitions for writ and cross-writ of certiorari ordered and directed to the United States Circuit Court of Appeals for the Second Circuit.

Complainant-Appellee, a New York corporation, commenced this suit in equity in the United States Circuit Court for the District of Vermont against the Defendant-Appellant, Howe Scale Company of 1886, which is a corporation under the laws of the State of Vermont, and in its bill of complaint, among other things, prayed for an injunction re-

straining said Appellant from advertising for sale, offering for sale or selling typewriting machines manufactured by the "Remington-Sholes Company," now known as the Fay-Sholes Company, bearing the name "Remington" or "Remington-Sholes" or "Rem-Sho" or "Remington-Sholes Company," and from advertising for sale, offering for sale or selling any such machines under said designation, or under any designation of which the name "Remington" was a part. The gravamen of the bill is fraud and unfair competition in business. The chief postulate of the bill and the case is that Complainant's product—typewriting machines—has for many years been known in the markets and to the trade and public, and has been referred to, identified, offered for sale and sold as the "Remington typewriter," and that Complainant and its business have been known to and designated by the public as the "Remington Company" and the "Remington Typewriter Company." The Appellant, Howe Scale Company of 1886, is charged with having *malo animo* inaugurated an inequitable and unfair competition in that it has made use of a simulated corporate name, Remington Sholes Company, and the designations "Remington-Sholes," "Rem-Sho" and "Remington-Sholes Company," in advertising for sale, offering for sale and selling typewriting machines as alleged and set forth in the bill of complaint.

The Appellee, Wyckoff, Seamans & Benedict, was incorporated under the laws of the State of New York in 1892, and is the successor in the typewriting business, and the good will thereof, of two "Remington" corporations—E. Remington & Sons and the Remington Standard Typewriter Manufacturing Company—the elder of which was incorporated in 1865, and founded its typewriter business in 1873. The manufactory and works of Appellee were established at Ilion, N. Y., by Appellee's predecessors, E. Remington & Sons. They

have been increased in size and capacity, from time to time, to meet the demands of the constantly growing business, which is now the largest and most valuable of its kind in the world. Its machines are favorably and widely known to the public as the "Remington Typewriter." The Appellant, Howe Scale Company of 1886, was at the date of the filing of the bill of complaint—Sept. 30th, 1898—the general sales agent in the United States of an Illinois corporation, known as the "Remington Sholes Company," and was actively engaged in introducing, commending and advertising, and in many ways offering for sale and selling the typewriting machines known as the "Remington Sholes" typewriter or "Rem-Sho" typewriter. These machines were made by the Illinois corporation, above named, whose factory was located at Chicago.

In its answer and otherwise, Appellant, Howe Scale Company, justifies by virtue of what it alleges to be the right of the Remington Sholes Company, now Fay-Sholes Company, to use said names and designations in the sale, etc., of typewriting machines, and fully identifies itself with that company.

The proofs show that the defense in the suit was assumed, conducted and paid for by the Remington Sholes Co., now the Fay-Sholes Company, which was and is the *real* party in interest herein. (Record 1358-1496).

The United States Circuit Court for the District of Vermont found and held that the use of the name "Remington" by the appellant, Howe Scale Company, was an unjustifiable invasion of Complainant-Appellee's right to the use of that name, and held that appellee was entitled to a decree suppressing the use of the name "Remington" in the compound or hyphenated name "Remington-Sholes" and the use of the abreviation "Rem," upon the said defendant-appellant's writing machines and in the sale thereof. From the decree

entered upon the decision of the said Circuit Court the Appellant, Howe Scale Company of 1886, appealed to the United States Circuit Court of Appeals for the second circuit, which latter court reversed the decree of the former without costs, and remanded the case with instructions to the Court below to decree in favor of Complainant-Appellee only as to the name "Remington."

The decision of the Circuit Court for the District of Vermont will be found 110 Fed. Rep., p. 520, and that of the Court of Appeals, 122 Fed. Rep., p. 348.

Shortly after the decree was made and entered in the United States Circuit Court for the District of Vermont, the "Remington-Sholes Company" eliminated the word "Remington" from its corporate name, and its machines and advertising *media*, discontinued the use of the abbreviation or short name "Rem," and substituted therefor the name of "Fay," who was the chief promoter, stockholder and President of that company, in all connections in which the name "Remington" had theretofore been used.

Soon after the Remington-Sholes Company ceased to use the name "Remington" in its corporate name and business, and upon its machines, Franklin Remington left the employ of that company, and ceased to have any active connection therewith, becoming President and General Manager of the Foundation & Contracting Company, a corporation under the laws of the State of New York, and has since, mainly, if not wholly devoted his time and attention to the business of the Foundation Company in the City of New York.

## Assignment of Errors.

The errors assigned in this case by the Howe Scale Company are in substance and effect,

1. That the Courts below erred in overruling and disregarding Appellant's motion to suppress certain evidence introduced in behalf of Complainant-Appellee.

Record, pp. 1440–1443.*

2. That the Courts below erred in finding and holding that the advertising for sale, offering for sale and selling, by Defendant-Appellant, of typewriting machines manufactured by the Remington-Sholes Company, now Fay-Sholes Company, under the name of and as Remington-Sholes typewriters, in the manner and circumstances disclosed in the proofs in this case, constituted an unlawful invasion of Complainant-Appellee's rights, and an unfair and inequitable competition, by reason of which Complainant-Appellee was entitled to a decree, restraining the appellant, Howe Scale Company of 1886, from using the name "Remington" upon and in connection with the sale of typewriting machines.

The Complainant-Appellee, Wyckoff, Seamans & Benedict, assign as error herein and say that the United States Circuit Court of Appeals for the second circuit erred in deciding, finding and holding that the short or abbreviated name "Rem-Sho" was not sufficiently like "Remington" to be by itself a reasonable cause of confusion, and in directing the Circuit Court of Vermont to decree in favor of Complainant-Appellee only as to name "Remington."

It is thought that it will materially aid the Court, if the above mentioned errors are discussed as they arise upon a presentation of the whole case and in the following order:

1. The primary postulate of complainant-appellee's case—that prior to the organization of the "Remington-Sholes Typewriter Company" and the

* See Brief on Appeal from Order, etc.

"Remington-Sholes Company," and when the bill herein was filed, the terms "Remington" and "Remington Typewriter," constituted designations by means of which complainant's writing machines were identified, and which were used by the trade and the public to distinguish its product and to effect the purchase and sale thereof.

2. The exclusive right of the complainant-appellee, as against the defendant and its principal, to the use of the name "Remington" and the abbreviation "Rem."

3. The right of the complainant-appellee to have enjoined the use of the term "Remington" in the compound or hyphenated name "Remington-Sholes" and the abbreviation "Rem" in the short name "Rem-Sho," upon and in connection with the sale of typewriting machines.

## History of Appellee and its Predecessors and Their Typewriter Business.

The complainant and its predecessors, in the typewriter business, reach back more than thirty years, namely, to the early part of the year 1873.

Its earliest predecessor, and the founder of its business, was E. Remington & Sons, a corporation created in 1865, by and under the laws of the State of New York, for the manufacture and sale of fire arms (R., pp. 16–663–665). This corporation took the name, property and franchises of a co-partnership theretofore existing, and between the years 1865 and 1886 was extensively engaged in the manufacture and sale of fire arms, cartridges, typewriters and other devices.

R., pp. 37, 38.

E. Remington & Sons commenced the manufacture and sale of the pioneer commercial typewriter in 1873 and continued the same until about March,

1886, when that corporation was dissolved (R., pp. 38–47). Its writing machines were manufactured at Ilion, N. Y., where its extensive plant was located, and they were extensively sold throughout the United States and in sundry foreign countries.

R., pp. 46, 52–55.

In or about March, 1886, Wyckoff, Seamans & Benedict, a co-partnership, which had been since 1882 and then was the sole selling agent of the "Remington" typewriter, purchased the entire typewriter branch of E. Remington & Sons' business, as hereinafter stated.

R., 66–72, 710–713, 716–729.

Wyckoff, Seamans & Benedict purchased said typewriter business with a view to forming a corporation, which they thereafter, and in or about the month of April, 1886, organized under the laws of the State of New York by the name and style of "Standard Typewriter Manufacturing Company," to which all the rights, franchises, property and interests theretofore acquired by them were duly conveyed.

R., pp. 66–72, 730–753.

In the year 1888 it was deemed advisable by the Standard Typewriter Manufacturing Company to associate more clearly still, the name "Remington" with its machine and business, and accordingly the name of the corporation was changed to "Remington Standard Typewriter Manufacturing Company."

R., pp. 73–74, 753–763.

This corporation continued to manufacture the same machines until 1892, when it was succeeded in the manufacture thereof by the appellee herein.

R., pp. 76–79.

From the year 1882 until the year 1892 the firm of Wyckoff, Seamans & Benedict, composed of

William O. Wyckoff, Clarence W. Seamans and Henry H. Benedict, was the sole selling agent of the writing machines manufactured by E. Remington & Sons, and afterward by Standard Typewriter Manufacturing Company, later known as Remington-Standard Typewriter Manufacturing Company.

R., pp. 52, 53, 74, 76.

In the year 1892 it was deemed advisable to unite the manufacturing and selling branches of the typewriter business in one corporation, and, accordingly, a corporation was organized under the laws of the State of New York called the "Standard Typewriter Company," which took over the interests and property of Wyckoff, Seamans & Benedict in the selling branch of the business, and immediately thereafter, by proceedings duly taken under the laws of New York, a consolidation was effected of the Remington Standard Typewriter Manufacturing Company and the Standard Typewriter Company, forming a new corporation under the name Wyckoff, Seamans & Benedict.

R., pp. 76, 77, 764–788.

The complainant appellee, Wyckoff, Seamans & Benedict, was, after the year 1892, both the manufacturer and seller of the "Remington" typewriter.

R., pp. 76, 79.

**Wyckoff, Seamans & Benedict, corporation, therefore, personifies the typewriter enterprise and business founded, in 1873, by E. Remington & Sons, and for many years thereafter carried on by said corporation.**

The new corporation, known as Wyckoff, Seamans & Benedict, acquired by purchase, by transfer, and by operation of law, all the property, rights, interests, franchises, patents, trade-names and trademarks, and the good-will of the business of its predecessors, E. Remington & Sons and Remington

Standard Typewriter Manufacturing Company, relating to the manufacture and sale of typewriters.

R., pp. 76–79, 764–793.

The business was a constantly growing one from the beginning. The first year there were probably 300 machines made, while in the year 1898 upwards of 25,000 machines were manufactured and sold, and since that time the works have been enlarged, and the annual output of machines has been very largely increased.

R., p. 95.

Appellee's machines have been extensively advertised, and are sold in all States and Territories of the United States, in Canada, Mexico, the South American States, England, Scotland, Ireland, Wales, Norway, Sweden, Denmark, Germany, France, Italy, Portugal, Spain, Hungary, Bohemia, Russia, Turkey, South Africa, Australia, New Zealand, West India Islands, Egypt, India, Strait Settlements, China, Japan, Central America, and the Hawaiian Islands, and other places.

R., pp. 95, 96, 211.

From the date of the removal of the business to the New Works, in 1889, which were located a short distance from the old factory, the Remington Standard Typewriter Manufacturing Company commenced purchasing the newest and latest style of machinery for the purpose of increasing its facilities for the manufacture of typewriters in greater numbers and of better quality, and no expense has been spared from that time to the present which could be of any benefit, either as regards the quality of the machines or in any way facilitate their manufacture. The plant has been enlarged so that it includes a greater amount of floor space than was previously occupied, and from about 200 employees at the factory of E. Remington & Sons in 1886, the number in 1899 had been increased to about 900. The

machines manufactured by the Remington Standard Typewriter Manufacturing Company and by Wyckoff, Seamans & Benedict Corporation have been from time to time designated by numbers, to wit, numbers 2, 3, 4, 5, 6, 7 and 8, etc., each number designating a somewhat different style of machine. Some time ago the complainant ceased to manufacture machines of lower number than the No. 6, which is the model now chiefly sold and used in the United States. The number 7 and the number 8 machines are chiefly sold and used in foreign countries.

R., pp. 79, 91–95, 96, 97, 98.

From the year 1882, when the firm of Wyckoff, Seamans & Benedict became the sole selling agents of the writing machines manufactured by E. Remington & Sons, up to the first of May, 1899, more than $1,000,000 had been expended in advertising said machines, exclusive of large sums expended by dealers and outside representatives, and at that time 250,000 machines had been manufactured and sold, which number has since been augmented to nearly half a million machines.

R., pp. 211, 212, 237.

**The members of firm of Wyckoff, Seamans & Benedict were prior to 1882 connected with the Remington typewriter business.**

William O. Wyckoff was, prior to 1882 an agent for the sale of the Remington typewriter from the time that it was first put upon the market, about 1874, until he became a member of the firm of Wyckoff, Seamans & Benedict in the year 1882.

Clarence W. Seamans was, about the year 1878, appointed manager of the typewriter department of E. Remington & Sons in the City of New York, and held that position until 1882, when he became a member of the firm of Wyckoff, Seamans & Benedict.

Henry H. Benedict, of the firm of Wyckoff, Seamans & Benedict, was connected with E. Remington & Sons in 1873, when the typewriter was taken on by said corporation, and he continued in its employ until 1882, when he too became a member of the firm of Wyckoff, Seamans & Benedict. He was a member of the Board of Directors of E. Remington & Sons, and held a prominent place in their councils.

R., pp. 52, 62, 63, 64.

Prior to 1882 the machines manufactured by E. Remington & Sons were sold through a variety of agencies, sometimes one G. W. N. Yost acted as agent for the sale of them, and, at one time, he associated with himself other parties, who purchased the machines from E. Remington & Sons and sold them. Later said corporation sold its own machines through its agencies in New York City, Washington, D. C., Chicago, Ill., Boston, Mass., Atlanta, Ga., and in sundry other cities in the United States, and through its offices in London and elsewhere in Europe.

R., p. 52.

In 1882 the firm of Wyckoff, Seamans & Benedict became the exclusive agent for the sale of the machines, and from that time forth and until March, 1886, they took the whole output of the typewriter department of E. Remington & Sons, and sold the machines throughout the United States and in many foreign countries.

R., pp. 52–54, 710–713.

E. Remington & Sons manufactured machines like complainant's exhibit "The Typewriter, Manufacturer's number 1640," with some modifications and in considerable quantity up to 1877. After 1877, they manufactured many thousands of upper and lower-case machines denominated the No. 2 machine. Other styles of machines were also manufactured and sold, designated 3, 4 and 5. After the

No. 2 machine came on the market, the demand for the No. 1 gradually fell off until the manufacture and sale of it entirely ceased, which was about 1884 The numbers designating the various machines, as Nos. 2, 3, etc., were employed to indicate differences in details of structure.

R., pp, 93, 94, 97, 98.

From the beginning of its manufacture, by E. Remington & Sons, "The Typewriter" gradually came into public favor and for several years, until 1880—it was without a rival in the market.

R., p. 206.

The typewriter businesss of E. Remington & Sons was a constantly growing one, and was carried on without interruption. Several thousand upper-case machines were manufactured and sold, and prior to March, 1886, said corporation had also manufactured and sold more than 20,000 of the No. 2 machines.

R., pp. 94 95.

## SALE OF THE TYPEWRITER BUSINESS BY E. REMINGTON & SONS.

On the 22nd day of March, 1886, E. Remington & Sons sold their entire typewriter business to Wyckoff, Seamans & Benedict. This purchase covered an agreement of license, from The Typewriter Company and James Densmore as Trustee to E. Remington & Sons, to manufacture writing machines under certain patents, together with all rights, privileges, franchises, property and interests secured in and by said license. Also all rights, privileges and franchises which E. Remington & Sons owned or held in and about the manufacture and sale of typewriting machines, together with the right to use and employ, on writing machines, the title "Standard Reming-

ton Typewriter," to the exclusion of said corporation. Also all special tools pertaining to the manufacture of typewriters, including patterns and models, and all materials specially provided for the manufacture of writing machines in, or about the works, whether raw material or in process of manufacture, all machines in process of construction, and sundry machines and tools, a schedule of which was set forth in the contract. The said corporation, E. Remington & Sons, also covenanted and agreed not to engage in the manufacture and sale of typewriting machines within the period of ten years from the date of said agreement.

R., pp. 66, 67, 716-723.

The firm of Wyckoff, Seamans & Benedict also took a three years' lease of that portion of the works of E. Remington & Sons in which the manufacture of writing machines had been and then was carried on.

R., pp. 66-69, 96, 725-728.

Said firm held the title to said property as "quasi trustees," and so carried on the business for a short while, that is, until the month of April, 1886, when a corporation was formed, under the laws of the State of New York, by the name and style of "Standard Typewriter Manufacturing Company," which took over all the property, rights, franchises and interests theretofore acquired of E. Remington & Sons by said firm.

R., pp. 72, 73, 730-753.

The "Standard Typewriter Manufacturing Company," whose name was subsequently changed to Remington Standard Typewriter Manufacturing Company (R., pp. 753-764), owned and carried on the business of manufacturing and selling said writing machines until 1892. The manufacture of the writing machines at the same place went on for the few days that Wyckoff, Seamans & Bene-

dict held the title, and subsequently was carried on by the Standard Typewriter Manufacturing Company without any break, *they employing the same Superintendent and the same skilled workmen who had been employed by E. Remington & Sons in its typewriter manufacturing department*, and the business was continued in substantially the same manner as it had theretofore been conducted. There was, however, a greater impulse given to the business, and the manufacture of machines rapidly increased in quantity, until within two years or less from the time of said sale and transfer of the business by E. Remington & Sons, as aforesaid, there were being manufactured by the "Standard Typewriter Manufacturing Company" from 40 to 60 machines per day.

R., pp. 72–73, 75, 76.

At or about the expiration of the three years' lease, heretofore mentioned, to wit, in the year 1889, the Remington Standard Typewriting Manufacturing Company first leased, and then bought, a large manufacturing plant about ½ of a mile from the premises theretofore occupied, known as the Remington Agricultural Works, and the typewriter machinery, tools and appliances were moved to this place, and, without any break worth mentioning, the manufacture of the machines was continued in the new works, where they have ever since been manufactured.

R., pp. 73, 74, 96, 97.

After the Standard Typewriter Manufacturing Company, later known as Remington Standard Typewriter Manufacturing Company, acquired the business, the machines were much more largely manufactured and sold, and agencies were established in almost every city of importance in the United States, and in many of the larger cities in England and on the Continent of Europe.

## DESIGNATIONS OF THE MACHINES.

For the first few years and until the production of the No. 2 typewriter, about 1877, the machine was technically known and designated as the "Sholes & Glidden" typewriter, although even then, in the general speech of people, it was more frequently spoken of as the "Remington typewriter." Up to the time of the production of the "Caligraph" machine, (about 1880), it was also frequently spoken of as "The Typewriter." After the production of the No. 2 machine, which was substantially different in structure and mode of operation from the No. 1, the machine became more distinctively the Remington typewriter, not only because it was being manufactured by E. Remington & Sons, but also because it had been so thoroughly re-organized at their works as to become in a larger sense the product of their skill and that of their workmen. From that time forth, the word "Remington" became more generally and more naturally associated with the machine as a distinguishing appellation, and after the "Caligraph" was put upon the market, it became generally known and designated as the "Remington," and thereafter it was advertised under that name alone, or in conjunction with the word "Perfected," and later with the word "Standard."

R., pp. 64, 65, 91, 92, 97.

As early as the year 1880, the machines were marked with and bore the name Remington, which was afterwards conspicuously placed on the paper-table of the machine and was also stamped on the machines in connection with other words.

R., p. 791.

In 1888, the Standard Typewriter Manufacturing Company registered the name "Remington" as a trade-mark for its writing machines. This trade-mark was duly assigned to complainant in May, 1892.

R., pp. 75, 76, 95, 788, 795.

## COMPLAINANT - APPELLEE EXCLUSIVE OWNER OF ALL TRADE-MARKS AND TRADE-NAMES OF ITS PREDECESSORS RELATING TO THEIR TYPEWRITER BUSINESS.

Under the consolidation proceedings, based on the New York statutes, all the property relating to the typewriter business of predecessors passed by operation of law to the complainant appellee, save and except such as was created by or existed under the statutes of the United States. The patents and the *registered* trade-marks were, however, duly assigned, so that no question in that regard can arise in this case.

**The complainant having acquired the good will of the typewriter business founded by E. Remington & Sons and carried on by it, and by its successors, and being rightfully in possession of said business, it is unnecessary to concern ourselves about the technical character of the conveyances from one purchaser of the business to another, or the fact that the name "Remington" may have had at the outset a specific meaning as indicating a particular concern.**

Richmond & Co. *v.* Richmond, 159 U. S., 293.

Walter Baker & Co. Ld., *v.* Sanders, 80 Fed. Rep., 889.

Raymond *v.* Royal Baking Powder Co., 85 Fed. Rep., 231.

Furthermore the circumstance that the corporation, E. Remington & Sons, long since ceased to manufacture typewriting machines, and was dissolved, is wholly immaterial, insofar as complainant's legal rights are concerned. That the complainant has the legal right to designate its product by the trade-names and trade-marks adopted and used by E. Remington & Sons and by its other predecessors, is abundantly supported by authority.

In Kidd *v.* Johnson, 100 U. S., 618, it appeared that the trade-mark in question was the designation "S. N. Pike's Magnolia Whiskey." This trade-mark was sold to Mills, Johnson & Co. by Pike, together with the distillery, the product of which it had been used to identify. Pike died in 1872, and Mills, Johnson & Co. continued to use the trade-mark. This Court said: "As to the right of Pike to dispose of his trade-mark in connection with the establishment where the liquor was manufactured, we do not think there can be any reasonable doubt. * * * Its subsequent use by the person to whom the establishment is transferred is considered as only indicating that the goods to which it is affixed are manufactured at the same place and are of the *same character* as those to which the mark was attached by its original designer."

In the case of LePage Co. *v.* The Russia Cement Co., 51 Fed. Rep., 943, Judge Putnam, speaking for the U. S. Circuit Court of Appeals of the First Circuit, said: "It is equitable that a manufacturer or dealer, who has given reputation to any article, should have the privilege of realizing the fruits of his labors by transmitting his business and establishment with the reputation which has attached to them, on his decease, to his legatees or executors, or during his lifetime to purchasers; and it is also in accordance with the principles of law, and with justice to the community, that any trade-mark, including *a surname*, may be sold with the business or the establishment to which it is incident; because, while it may be that individual efforts gave them their value at the outset, yet, afterwards, this is ordinarily made permanent as a part of the entire organization, or as appurtenant to the locality in which the business is established, and thenceforward depends less on the individual efforts of the originator than on the combined result of all which he created."

In Russia Cement Co. *v.* LePage Co., 147 Mass., 206, the case of Hoxie *v.* Chaney, 143 Mass., 592,

was approved. The Court referred to Hoxie *v.* Chaney as being "quite conclusive," and added: "It was there held that 'A. N. Hoxie's Mineral Soap' and 'A. N. Hoxie's Pomice Soap' were trade-marks and assignable as such, and that they did not necessarily mean that the soaps were made by A. N. Hoxie."

This Court in Brown Chemical Co. *v.* Meyer, 139 U. S., 548, said: "So in Menendez *v.* Holt, 128 U. S., 514, it was held that when a partner retires from a firm, assenting to or acquiescing in the retention by the other partners of the old place of business and the future conduct of the business by them under the old name, the good-will remains with the latter, as of course, and that, under such circumstances, the right to use a trade-mark passes to the remaining partners as a part of such good-will. There are a few cases indicating that the mere right to use a name is not assignable, notably Chadwick *v.* Covell, 151 Mass., 190, but none that it may not be assigned to an outgoing partner or to a successor in business as an incident to its good-will. Ainsworth *v.* Walmsley, L. R. I. Eq., 518; Derringer *v.* Plate, 29 Cal., 292."

To the same effect are the cases of Clark Thread Co. *v.* Armitage, 74 Fed. Rep., 940, and Rahtjen's American Composition Co. *v.* Holzappel's Composition Company, 101 Fed. Rep., 260. There is no doubt about the rule.

In this case the name used by the complainant-appellee, upon and in connection with the manufacture and sale of its machines, is one which was selected and used by its predecessor, E. Remington & Sons, and later used and registered as a trade-mark by its predecessor, "Standard Typewriter Manufacturing Company." The fact that the name "Remington" is not a part of complainant-appellee's corporate name is wholly immaterial; for, as said by Mr. Kerly in his Law of Trade-Marks, 2d Ed., at. p. 463: "*The name need not be the personal name of the plaintiff. It need not even be that of*

*a predecessor in business*, for a trader may lawfully adopt and trade under any name which is unappropriated for business of the same kind, *and when the name has become his by repute, he is as well entitled to protection for it as if it were his own.*"

To the same effect is the case of Wm. Rogers M'f'g Co. *v.* Rogers & Spurr M'f'g Co., 11 Fed. R., 495, 498.

**The manifest purpose of the complainant-appellee in using the designation "Remington typewriter," etc., as that appellation has been and is used in innumerable connections upon its writing machines, and in catalogues, circulars and advertisements, and in a multiplicity of other ways, was and is to preserve and perpetuate the individuality of its product in connection with the business of the corporation, which founded the typewriter business of which complainant-appellee is the lawful successor. Said designation means and symbolizes the typewriter business established and carried on by E. Remington & Sons.**

## APPELLEES' BUSINESS AND THE GOOD-WILL THEREOF.

The complaintant-appellee stands in the shoes of its predecessors, and whatever rights or interests they acquired, held or possessed, as regards the manufacture and sale of the "Remington" typewriter, are now duly and fully vested in it. It is clearly manifest from an examination of the several conveyances from E. Remington & Sons to the firm of Wyckoff, Seamans & Benedict, and from said firm to that which came to be known as the "Remington Standard Typewriter Manufacturing Company," and the consolidation proceedings leading to the formation of the complainant corporation, that all property, rights and interests of every name and nature relating to the typewriter business founded by E. Remington & Sons, including the

good-will of said business and the trade-names and trade-marks, became and now are the property of complainant-appellee.

Whilst it is true that the good-will of the business is not *specifically* mentioned in the several conveyances, nevertheless, in each case, the *whole* typewriter business was conveyed, and the language of the conveyances is sufficiently broad and inclusive to cover the whole business and the good-will, trade-names and trade-marks used therein.

The rule of law is well settled that the good-will of a business passes and is included in an assignment or conveyance which conveys all the assignor's interests in the premises and effects *without specifically referring to the good-will.*

> Shipwright *v.* Clements, 19 W. R., 599; Wilmer *v.* Thomas, 74 Md., 485; Boon *v.* Moss, 70 N. Y., 473.

Trade-marks and the good-will of a business are inseparable, and hence a trade-mark will pass under a general conveyance of all the assets, etc., though not specifically designated.

> Morgan *v.* Rogers, 19 Fed. Rep., 596; LePage Co. *v.* Russia Cement Co., 51 Fed. Rep., 943; Sebastian's Law of Trade-Marks, 4th Ed., p. 299, and cases cited; Kerly's Law of Trade-Marks, 2nd Ed., 330.

Sebastian says (4th Ed., p. 299) that "The sale of a business carries with it the good-will and trade-marks, and the sale of a business and good-will carries with it the right to the trade-names, and the words, assets and effects of every kind and nature, in a bill of sale of a business, cover the trade-marks used in the business."

As already observed, the language of the conveyances is comprehensive enough to vest in the complainant-appellee the good-will, trade-names and trade-marks used in said typewriting business.

The good-will of the complainant-appellee's business is a very valuable one. The proofs show that the Remington typewriter was the *first* commercial writing machine ever placed upon the market, and was the only one in commercial use prior to the year 1881. Since the business was first established, the manufacture and sale thereof has steadily increased, and complainant's machines are now known, used and sold in all parts of the civilized world. The business has grown to be the largest one of its kind in the world, and it is no exaggeration to say that more Remington typewriters are manufactured and sold than of all other makes combined. In May, 1899, 250,000 of complainant's machines had been sold, and since that time the number has been augmented to nearly half a million machines. A great deal of time, energy and money have been expended in pushing and extending complainant's business, *and the evidence establishes that from the year 1882 up to May, 1899, more than $1,000,000 had been expended in advertising complainant's machines and business.* It always has been and is today the *best* machine on the market. In other words, it is the Standard Writing Machine.

R., p. 207.

In Hilson Co. *v.* Foster, 80 Fed. Rep., 896–897, the Court said: "Where the goods of a manufacturer have become *popular*, not only because of their *intrinsic worth, but also by reason of the ingenious, attractive and persistent manner in which they have been advertised, the good-will thus created is entitled to protection. The money invested in advertising is as much a part of the business as if invested in buildings, or machinery, and a rival in business has no more right to use the one than the other, no more right to use the machinery by which the goods are placed on the market than the machinery which originally created them. No one should be permitted to step in at the eleventh hour and appropriate advantages resulting from years of toil on the part of another.*"

Good-will has been variously defined by the courts. In Menendez *v.* Holt, 128 U. S., 514–522, Chief Justice Fuller says: "Good-will was defined by Lord Eldon in Cruttwell *v.* Lye, 17 Ves., 335, 346, to be 'nothing more than the probability that the old customers will resort to the old place;' but Vice-Chancellor Wood in Churton *v.* Douglas, Johnson, V. C., 174, 188, says: 'It would be taking to narrow a view of what is there laid down by Lord Eldon to confine it to that, but that it must mean every positive advantage that has been acquired by the old firm in the progress of its business, whether connected with the premises in which the business was previously carried on, *or with the name of the late firm*, or with any other matter carrying with it the benefit of the business.'"

In that case it was held that a trade-mark might be part of the good-will of a firm and was in fact a part of the good-will of the appellee's firm

In Knoedler *v.* Boussod, 47 Fed. Rep., 465, 466, the Court said: "*The good-will of a business comprises those advantages which may inure to the purchaser from holding himself out to the public as succeeding to an enterprise which has been identified in the past with the name and repute of his predecessor.*"

In Washburn *v.* National Wall Paper Co., 81 Fed. Rep., 17–20, the Court defined good-will as follows: "Good-will has been defined 'as all that good disposition which customers entertain toward the house of business identified by the particular name or firm, and which may induce them to continue giving their custom to it.' There is nothing marvelous or mysterious about it. When an individual or a firm or a corporation has gone on for an unbroken series of years conducting a particular business, and has been so scrupulous in fulfilling every obligation, so careful in maintaining the standard of goods dealt in, so absolutely honest and fair in all business dealings that customers of the concern have become convinced that their experience in the future will

be as satisfactory as it has been in the past, while such customers' good report of their own experience tends continually to bring new customers to the same concern, there has been produced an element of value quite as important—*in some cases, perhaps, far more important—than the plant or machinery with which the business is carried on.* That it is property is abundantly settled by authority, and, indeed, is not disputed."

In this case the Circuit Court of Appeals, speaking by Judge Lacombe, said: "It is not disputed here that the firm and the corporation of E. Remington & Sons acquired a high and well deserved reputation for careful workmanship in every branch of manufacture which it undertook, nor is it disputed that the typewriting machines which the corporation and its successors have continuously manufactured at Ilion are most favorably known to the public and associated in the public mind with the name 'Remington,' so that the ordinary purchaser is quite likely to assume that a machine offered to him for sale as a 'Remington' has come from an establishment founded by the Remingtons at Ilion nearly half a century ago. To this manufacture and trade complainant succeeded in 1886; it thereupon became entitled to conduct the business of manufacturing machines and selling them as Remington machines, and would have the right to invoke the aid of a Court of Equity to restrain another trader from any action which would be calculated unnecessarily to confuse the goods of his own make with those of complainant."

## VALUE OF NAME REMINGTON.

**The name "Remington," which has for many years been generally and widely known to the trade as symbolizing complainant-appellee's product and business, is a very important and valuable part of the good-will of its business.**

Testifying concerning the reputation of complainant-appellee's product and the good-will connected therewith, Silas W. Crandall (R., pp. 544, 545) says: "I had in mind the fact that the reputation of an article, particularly of a typewriter, its good-will in the estimation of the public, was the most important fact connected with the sale of the article or a typewriter. The reputation of the typewriter is probably more advantageous than a complete selling organization.

"Its value is inestimable. * * * The name and the reputation of the Remington typewriter are synonymous terms. We meet with this fact personally, and in correspondence, particularly in talk with competitors and competitors' salesmen, in the evident desire of competitors' salesmen to associate themselves with our organization, receiving applications from them often and repeatedly, being assured by them that if they could make even a humble record with another machine, with the Remington they could make a brilliant success. With conversations with customers, past and prospective, our attention often being called to the fact that a machine they have bought, used before, had given especial satisfaction, and that they were pleased to duplicate the purchase, because of the fact, *and considered that the name was synonymous for good principle, selection of material, workmanship, and finish*; and we have had our attention also called to this fact by manufacturers and tradesmen in other lines of business by using some expression, for instance, 'As good as the Remington,' or 'The Remington is synonymous with the best.'"

Another witness called on behalf of complainants was Mr. John S. Bayes, who says: "The Remington is very widely and favorably known by typewriter users, and the general reputation of the machine no doubt affects the sale materially of typewriters. It is frequently said by typewriter salesmen, who represent other machines, that theirs are as good as the Remington, and the question is frequently asked by the public whether such and such a machine is as good as the Remington."

Being asked to what extent, according to his experience and observation, the name Remington was a controlling factor in the sale of a writing machine, he said: "I don't believe that it would be possible for to sell 25 per cent. of the number that are now being sold if the name was taken off and it was marketed as another machine."

R., pp. 549–550.

Mr. John F. McClain, a witness for appellee, who has had a very large experience and observation in connection with the sale of writing machines, and particularly with the Remington typewriter, says: "The reputation of the machine is such that I find everywhere a predisposition in its favor and in many cases on the part of the people who do not know why they have it; who never saw a typewriter and never used one, but who instinctively think of the Remington when the subject of writing machines is mentioned; and who to that extent are prejudiced in its favor. I find also salesmen of other machines frankly admit that *it is Remington name* rather than Remington merit they find the hardest to fight." Being further interrogated as to what extent the name "Remington" aided in the sale of typewriting machines, irrespective of particular construction or mode of operation, he answered that it was "half the battle."

R. V., II., p. 607.

To the same effect is the evidence of Baer, R., p. 602, and Crean, R., p. 595.

**The great repute and value of appellee's business was admitted by the learned counsel for the defendant-appellant in the Courts below. They there said: "When the Remington-Sholes Company and its predecessor entered the field, complainant had a world-wide reputation" (Brief, p. 98).**

*We have particularly called the attention of this Court to the great value of the good-will of complainant's business, because this case is one that is concerned with an injurious attack upon it.* "All such cases, whether of trade-mark, or trade-name, or other unfair use of another's reputation, are concerned with an injurious attack upon the good-will of a rival business; customers are diverted from one trader to another, and orders intended for one find their way to the other. Trade-marks are really a branch of the good-will of the business with which they are connected, representing it in the market, while the trade-name over the shop represents it to the passer-by."

Sebastian's Law of Trade-Marks, 4th Ed., 17.

## REMINGTON CONCERNS.

Prior to 1894, the only Remingtons who had ever been engaged in the manufacture or sale of typewriting machines were complainant's predecessors, E. Remington & Sons and Remington Standard Typewriter Manufacturing Company, to whose business, good-will, trade-names and trade-marks complainant-appellee succeeded.

**Moreover, complainant-appellee's writing machines were the first and the only ones that were ever known or designated by the name "Remington," or bore that name, until the so-called "Remington-Sholes Typewriter" was put upon the market, in or about December, 1894.**

R., pp. 61, 62, 101, 410.

## COMPLAINANT-APPELLEE'S TRADE-NAME.

**"Remington Company," "Remington Typewriter Company," etc., in the mind of the public mean appellee and its business, and it was so known prior to the organization of the "Remington-Sholes Company" and the "Remington-Sholes Typewriter Company."**

**This fact is alleged in the bill of complaint herein.**

R., p. 15.

The proofs of complainant-appellee clearly establish the allegations of the bill in this regard.

In the first place, the fact is to be borne in mind that *complainant-appellee's predecessors, E. Remington & Sons and Remington Standard Typewriter Manufacturing Company, actually bore the name "Remington";* that is to say, the name "Remington" formed a part of and was a salient feature of their corporate names. Such was the fact in 1892, when the complainant corporation was formed by the consolidation of "Remington Standard Typewriter Manufacturing Company" and "Standard Typewriter Company." *It was therefore perfectly natural that the complainant-appellee and its business should continue to be known and designated as "The Remington Company" and "Remington Typewriter Company," etc.*

The testimony fully establishes this fact.

Howard B. Wilson, who had been in the employ of Wyckoff, Seamans & Benedict for 12 years, testified that for several years prior to 1899 he had had charge of the correspondence and mail matter addressed to the appellee, and that "mail matter addressed to 327 Broadway, which is evidently intended for Wyckoff, Seamans & Benedict, is constantly being received as the 'Remington Typewriter Company'; 'Remington Typewriter.'" He also stated that he had observed this fact for "five or

six years." Furthermore, ever since he had been connected with the house, he had observed that in conversation with customers they would refer to Wyckoff, Seamans & Benedict as the "Remington Company," or the "Remington Typewriter Company," or the "Remington Typewriting Company."

R., pp. 235, 236.

Charles Henry Downs in his testimony referred to the complainant-appellee as the "Remington Typewriter Company" and the "Remington People."

R., p. 247.

Albert D. Brown, who said he had been in the employ of appellee and its predecessors at St. Paul, Minn., since May, 1884, testified that letters and communications intended for them were frequently received at said office addressed to "Remington Typewriter," "Remington Typewriter Company," and "Remington Company."

R., pp. 283, 284.

It also appears from the testimony of Silas W. Crandall that a great many letters and communications intended for the Chicago office of Wyckoff, Seamans & Benedict were thus addressed.

R., pp. 288–304, 470–473, 540–543.

Wm. J. McNally's testimony also says that "Remington Typewriter Company" was the ordinary designation of appellee's business in Chicago.

R., pp. 320, 322.

George E. Field, manager of the Indianapolis office of Wyckoff, Seamans & Benedict since Jan., 1885, testified that letters frequently came to that office addressed to "Remington Typewriter Company," and that appellee was often called by that name. He produced sundry envelopes that had contained letters intended for and received by the

appellee which were thus addressed, and appellee was also referred to colloquially as the "Remington People."

R., pp. 336–338, 340, 341.

Andrew J. Scorer, a witness for appellee, who had previously been in the employ of the appellant, referred to the appellee as the "Remington Company."

R., p. 347.

Samuel Weingart, another witness called by appellee, understood the name "Remington Typewriter Company" as referring to it and its business.

R., pp. 511, 513, 515.

Walter M. Scheumaker, a witness for appellee, stated that Mr. Seddon, one of appellant's agents, in conversation with him referred to the fact that a person had called at the store of its agents in New York City and inquired, "Is this the Remington Company?"

R., p. 178.

Richard C. Daniel testified that he had been in the employ of "Remington-Sholes Company" and was in charge of its sales office in St. Louis, Mo., in 1899. That parties sometimes called at their place of business and inquired if that was the office of the "Remington Typewriter Company."

R., pp. 461, 462.

John Culpeper, manager of the office of Wyckoff, Seamans & Benedict in the City of Richmond, Va., testified that complainant-appellee conducted its sales offices and business in Virginia and North Carolina under the name "Remington Standard Typewriter Company."

R., pp. 630, 632.

William A. Catlin, resident manager of Wyckoff, Seamans & Benedict at Kansas City, Mo., testified that a fair percentage of their daily mail came addressed "Remington Typewriter Company," and that appellee was better known to the public as the "Remington Typewriter Concern" than by the name Wyckoff, Seamans & Benedict.

R., p. 534.

George J. Wallau, who had charge of the exhibit of Wyckoff, Seamans & Benedict at the Paris Exposition in 1899, testified that Wyckoff, Seamans & Benedict maintained a large office in Paris, the business being transacted there under the name "Remington Standard Typewriter Company."

R., pp. 612, 616.

Its sales business has been and is so conducted both in this country and in foreign countries.

Numerous exhibits were offered in evidence in this suit showing that complainant-appellee was known to the public and is frequently referred to and addressed as the "Remington Typewriter Company," etc.

R., pp. 860, 861, 868, 932, 936, 937, 938, 939, 940, 942, 944, 947, 952, 953, 954, 956, 972, 988, 989, 990, 991, 992, 993, 994, 995, 996, 998 and 1000.

## APPELLANT'S PROOFS ARE TO THE SAME EFFECT.

Mr. Romig, a salesman in the employ of the appellant, added a postscript to a letter written July 19, 1898, by one Seddon on behalf of the defendant and the Remington-Sholes Company, in which complainant is referred to as the "Remington Company."

R., pp. 971, 972.

In his answer to RDQ 135, Romig refers to complainant as the "Remington Company."

Frank L. Sholes, a witness for defendant-appellant, testified that he received at the office of the Remington-Sholes Company in Philadelphia two written communications, one addressed to "Remington & Company" and the other to "Remington Typewriter Company," both which were intended for complainant's Philadelphia office.

R., p. 1201.

J. Franklyn Hobbs, manager of the Chicago branch of the Remington-Sholes Company, testified (R. 1094), I have often heard them (Wyckoff, Seamans & Benedict) called the "Remington People" and occasionally the "Remington Typewriter Company."

M. C. Vance, a witnesss for defendant, being asked if she knew by whom the Remington machine was manufactured, answered: "Wyckoff, Seamans & Benedict, or the Remington Typewriter Company" (R., 1210). Again, in answer to x-Q 49 (R., 1214), she refers to the complainant as the "Remington Company," and in answer to x-Q 50, as "Remington Manufacturing Company."

Thomas O. Parker, a salesman in the office of Page, Dennis & Co., or the Howe Scale Company, 341 Broadway, New York City, from Jan. 1st, 1898, until Sept. of the same year, refers to the complainant as the "Remington Company."

R., p. 1291.

Mr. Joshua T. Gillelan, an agent for the sale of the Rem-Sho typewriter in Baltimore, Md., in 1898, in his testimony refers to the complainant as "The Remington Typewriter Company" and "The Remington Company."

R., p. 1331.

Mr. Wilgus, a salesman in the employ of the Remington-Sholes Company at Philadelphia in 1898, testified that he had been "asked by a number of parties, 'Have you any connection with the Remington Company?' * * *"

R., p. 1347.

It is therefore plain that "Remington Company," "Remington Typewriter Company," etc., were trade names by which the complainant-appelle was known to the public long prior to the filing of the bill herein, and prior to the organization of the so-called Remington-Sholes Typewriter Co. or Remington-Sholes Co.

## NAME BY USAGE AND REPUTATION.

**A corporation may acquire a property right to the use of a name other than its corporate name as incidental to the good-will of its business.**

Goodyear R. Co. *v.* Goodyear Rubber M. Co., 21 Fed. Rep., 277.

Thomas *v.* Dakin, 22 Wend., 9; 1 Cook on Corp., Sec. 15, p. 58; 1 Thompson on Corp., Sec. 286; 7 Enc. Law (2d Ed.), 685; 10 Cyc. Law, 151.

The fact that a corporation may be known and acquire reputation by a name different from its corporate name is referred to and recognized by the New York Court of Appeals in the case of Charles S. Higgins Co. *v.* Higgins Soap Company, 144 N. Y., 462. In that case Chief Judge Andrews (p. 465) observes: "The business was very valuable, and the plaintiff and its predecessor expended, subsequent to 1879, in advertising, the sum of $300,000, and the product was extensively sold in New York and other states and was well known to the trade as 'Higgins Soap,' and *the plaintiff corporation was sometimes known as the 'Higgins Soap Company.'*"

Again (p. 470) the learned Judge says: "But while the plaintiff's name does not describe its business, its product has come to be known to the trade as "Higgins Soap," and to the public the name of the product identified the plaintiff as the manufacturer of this product, *and the company came to be known and called, to some extent, the 'Higgins Soap Company.'*"

In the case of Tuerk Hydraulic Power Company *v.* Tuerk, et al. (36 N. Y. Supp., 384), the plaintiff was known to the trade by the name of "the Tuerk Water Motor Company," which it will be observed was quite different from its corporate name.

To the same effect, S. Howes Co. *v.* Howes Grain-Cleaner Co., 52 N. Y. Supp., 468, 469.

The name "Remington" has been so long, so intimately and *exclusively* associated with the business of appellee and its predecessors, that appellee has become widely and generally known to the public and to the trade, by the name "Remington Typewriter Company" and "Remington Company." **Appellee's business had acquired a worldwide reputation under the trade name of "Remington Typewriter Company" before appellant's principal entered the typewriter field.**

## NAME OF COMPLAINANT'S PRODUCT.

**The writing machines manufactured and sold by complainant-appellee and its predecessors have for many years been known to the trade and to purchasers and users of writing machines as the "Remington" typewriter, and have been so designated, offered for sale and bought and sold.**

**The name "Remington" and "Remington typewriter" in the public mind denotes the product of complainant-appellee. That name, long antecedently to the operations of defendant-appellant and the Remington-Sholes Company and its**

**predecessors, had acquired a secondary meaning or signification, and had become a trade denomination of complainant's writing machines.**

The testimony in this case clearly establishes this fact. The trade and the public know appellee's product by that which Judge Lacombe called "the short trade phrase and abbreviated and popular form" of expression (71 Fed. Rep., 169); what the New York Court of Appeals called "the short phrase, between buyer and seller, which indicates the wish to buy and the power to sell" (45 N. Y., 291); what Judge Jenkins, in the Pilsbury case (64 Fed. Rep., 841, 847) aptly terms "catch-words easily retained in memory;" and what Judge Shipman termed, in the Baker case (87 Fed. Rep., 209, 210) "the well known short name by which the public styles the article."

**Thomas Richardson** testified that "for the first few years, and perhaps until the production of the No. 2 typewriter in 1877, the machine was technically known as the 'Sholes & Glidden,' although, in the general speech of people at Ilion and elsewhere, * * * it was even then more generally spoken of as the 'Remington' typewriter, and in fact I think that very few people knew of any other designation or appellation for that machine."

R., pp. 64–66, 929.

After Wyckoff, Seamans & Benedict and the Standard Typewriter Manufacturing Company acquired the typewriter business of E. Remington & Sons, Mr. Richardson says the machines "were known to the people at large, the users, and generally, if not universally, designated as the Remington or the Remington Typewriter, or the Remington typewriting machines."

R., p. 75.

**William K. Jenne**, who has been connected with the Remington typewriter enterprise from its incep-

tion, in 1873, says: "At first they (the machines) were quite generally called the Sholes & Glidden machine, but after a time it became known generally as the 'Remington' machine, and I am not quite clear about the date, *but I think it was about 1875; sometime in the year 1875*, when the name Sholes & Glidden was left off the machines altogether, and from that time they have been generally known as the 'Remington' machine."

R., p. 92.

**Thomas F. Crean** stated that he had been acquainted with the machines manufactured by the complainant and its predecessors for upwards of 15 years, and had never known them to be called or designated by any other term or name than "Remington" machine; "that is 'Remington No. 2,' or 'Remington No. 6;' sometimes where a particular model was being referred to, following the word 'Remington' by the number of that model, but always by the term 'Remington.'"

R., p. 120.

He produced 165 applications made to complainant-appellee for positions by stenographers and typewriter operators, in 153 of which the word "Remington" was used in designating the machine they operated, *and 10 of said applicants used the abbreviation "Rem."*

R., p.121.

He also produced sundry letters, from the files of appellee wherein the machines were referred to as "Remington," and numerous catalogues and publications, wherein the complainant's machines were designated as the "Remington." *Among others, a letter addressed by the London dealer to Wyckoff, Seamans & Benedict in Feb., 1884, at the head of which was printed or engraved, "Remington Typewriter Depot, 6 King St., Cheapside, London, E. C."*

Many other publications, letters, etc., were produced by Mr. Crean, wherein appellees machines were referred to as the "Remington," or "Remington typewriter."

R., pp. 124–128.

**Joseph E. Platt** had been engaged in the sale of typewriting machines for about 11 years at the time he gave his testimony in April, 1899. He stated that the machines manufactured by the complainant and its predecessors, and whose machines he sold from 1888 to 1898, were known, designated and spoken of in New Haven, and in other places in the State of Connecticut, as the "Remington typewriter."

R., p. 141.

**Robert M. Johnston,** a typewriter salesman for Wyckoff, Seamans & Benedict in the City of Philadelphia, canvassed that city in Jan., 1899, calling at sundry offices and places of business therein, for the purpose of inquiring what typewriting machines were used. In most instances he ascertaind that the persons or corporations—about 100 in number—upon whom he called used the appellee's product, which in most instances they designated as the "Remington."

R., pp. 148–165.

**Harry W. Conant,** of Cambridge, Mass., canvassed the City of Boston for the purpose of ascertaining what typewriting machines, if any, were in use in the offices and places of business which he visited, and for the purpose of learning by what names the machines in use were called by the owners or users thereof. He visited 132 offices, where in response to his inquiry as to what typewriter they used, he was informed that they used the "Remington," or "a Remington," or "Remingtons," and in one place the reply was "a Standard, and is not the Remington the Standard."

R. V. I., pp. 165–169.

**Byron A. Brooks** testified that the machine first manufactured by E Remington & Sons was called "The Typewriter," or the "Sholes & Glidden typewriter." That the machine was sold under the name of "The Typewriter" until about 1879 or 1880, when other machines began to come upon the market and it was thereafter called the "Remington" to distinguish it from other writing machines. Since 1880, machines manufactured by complainant's predecessors and by complainant have been known as the Remington No. 2, etc.

Brooks further stated that *he had often heard operators and salesmen speak of the machine as the "Rem," or as "No. 2 Rem," when asked what machines they were using.*"

R., p. 190.

**Howard Spelman,** a salesman in the employ of appellee, canvassed the City of New York in December, 1898, and Jan., 1899. He visited various offices and places of business in said city for the purpose of learning how complainant's machines were designated by the trade, by second-hand dealers and merchants, and copy offices. He visited 101 business places in all. The result of his inquiry was, that in each case, the second-hand dealer and the offices and places of business, which he visited, designated appellee's machine as "Remington" or "The Remington."

R., pp. 201-204.

**Walter J. Barron,** an early inventor in the typewriter art, has been connected with the improvement, manufacture and sale of writing machines since about 1871, and is familiar with the history, development, manufacture and sale of appellee's machines. He testified that since about 1878 the machines manufactured by appellee's predecessors and by it were called the "Remington" typewriter, and had been so known to the public. After the "Caligraph" was put upon the market—about

1880—*it was frequently designated by operators and by salesmen, simply, as the "Rem,"* and when the word "Remington" was used it was intended to convey the idea simply, that it was a "Remington" typewriter.

R., pp. 206, 207.

**Robert McKean Jones,** testified that he was in the service of appellee for nine years prior to May, 1899, and for the greater part of that time he had been in charge of their advertising department. *He produced numerous publications, magazines, catalogues, etc., in which appellee's machines and those of its predecessors were advertised designated and referred to as the "Remington" and "Remington typewriter."*

R., pp. 210–232.

**Charles H. Cook,** of Chicago, examined the files of the *Chicago Tribune* in Feb., 1899, for the year 1892, and to the year 1898 inclusive. He looked over the advertising circulars of the *Sunday edition only*, under the headings: "*Situations wanted*—Stenographers; male. *Situations wanted*—stenographers; female. *Help wanted*—stenographers; male. *Help wanted*—stenographers; female; typewriters." He examined the files for the period mentioned to ascertain how many times the "Remington" machine was referred to under those classified headings. *He counted 8,210 advertisements in which the word "Remington" occurred, and 813 advertisements in which the word "Rem" was used.* The words "Remington" and "Rem" occurred as follows:

1892 "Remington" occurred 1,247 times; "Rem" 29 times.

1893 "Remington" occurred 1,301 times; "Rem" 30 times.

1894 "Remington" occurred 966 times; "Rem" 43 times.

1895 "Remington" occurred 1,240 times; "Rem" 111 times.

1896 "Remington" occurred 1,277 times; "Rem" 120 times.

1897 "Remington" occurred 1,146 times; "Rem" 176 times.

1898 "Remington" occurred 1,033 times; "Rem" 304 times.

**These advertisements were inserted by persons desiring to obtain positions as stenograpers and typewriter operators, by firms desiring to employ such persons, and by people having for sale or wishing to buy writing machines.**

R., 272-275.

**Wm. H. Harmon,** in the employ of appellee at its Chicago office, testified that his chief duty was to supply business men with stenographers. He produced sundry applications of persons for positions as stenographers, etc., covering the years 1897, 1898 and 1899. He stated that he had examined said applications for the purpose of determining what percentage of the applicants for positions used the abbreviation "Rem," and what percentage thereof the word "Remington." *For the period beginning June, 1897, and ending February, 1899, he found that of 4,101 applicants for stenographic positions within that period 3,806 used the word "Remington." One used the word "Reming"; two used "Rem St'd"; 9 used "Rem No. 2"; 8 used "Rem No. 6," and 275 used "Rem."*

R., pp. 275-278.

**John S. Bayes,** a typewriter salesman in the employ of appellee, who had been soliciting and selling typewriters since 1892, testified that appellee's machines were known to the trade and among purchasers and users of typewriters in Chicago as the "Remington" and the "Remington typewriter."

R., p. 279.

**Albert D. Brown** stated that appellee's machines were known in the trade and by purchasers and users in St. Paul, Minnesota, as the "Remington typewriter."

R., p. 283.

**Silas W. Crandall,** general manager of appellee's Chicago office since 1883, testified that the machines manufactured and sold by the appellee were known in the trade and to purchasers and users thereof, within the territory under his management, as the "Remington."

R., pp. 288, 289.

**Eugene A. Conyne,** salesman of the appellee in the City of Chicago since 1892, testified that appellee's machines were known by almost everybody as the "Remington typewriter."

R., pp. 312, 313.

**Donald McKay,** another salesman had been in the employ of appellee for about 10 years. He testified that appellee's machine was generally known and designated in the trade and by purchasers of writing machines as the "Remington" typewriter.

R., p. 316.

**Wm. J. McNally,** city manager of appellee's Chicago office, stated that appellee's machines were generally known and designated in the trade and among purchasers and users as the "Remington." He said he had never heard the machine called anything but the "Remington."

R., pp. 320, 321.

**Oscar W. Kotchtitsky,** in January, 1899, canvassed offices and places of business in the City of St. Louis for the purpose of learning how the machines made by appellee were commonly known and designated.

*He visited 38 offices and places of business, and in every instance where the appellee's machine was used it was designated as "The Remington" or the "Remington typewriter."*

R., pp. 329–336.

**George E. Field,** manager of appellee's Indianapolis office for many years, testified that the machines manufactured and sold by appellee were generally known in the trade, and among purchasers and users of writing machines in and about Indianapolis, Ind., as the "Remington."

R., pp. 336–337.

**John F. Soby,** manager of complainant-appellee's Philadelphia office, stated that the machines of appellee were generally known and designated in the Philadelphia market, and among purchasers and users of such machines as the "Remington."

R., pp. 493, 494.

**Bruce L. Holton** designated complainant's machines, which he was engaged in selling at St. Joseph, Mo., as "the Remington typewriter."

R., p. 522.

**Wm. A. Catlin,** resident manager of appellee's office at Kansas City Mo., also designated appellee's machines as the "Remington typewriter."

R., p. 530.

**J. Franklyn Hobbs** referred to complainant's machines, in his testimony, as the "Remington typewriter" and "Remington machine."

R., pp. 552, 553.

**John F. McClain** testified to the extensive sale and use of complainant's machine in Europe, and to the fact that it was generally known as the "Remington."

R., pp. 607–610.

Sundry exhibits showing that appellee's machines, for many years, have been designated "Remington" and sometimes "Rem," will be found in R. pp. 849-855. *Scribner's Magazine for August, 1881, Harper's for January, 1882, and the Century for February, 1882, contain advertisements inserted by E. Remington & Sons in which the name "Remington" is employed in connection with the word "Perfected" as a designation for their machines.*

R., pp. 855, 857, 929.

**The further fact is to be noted, in this connection, that in October, 1888, appellee's predecessor "Standard Typewriter Manufacturing Company" registered in the United States Patent Office the name "Remington" as a trademark for its writing machines, stating that it had continuously used the same since about March, 1886, and that its predecessor E. Remington & Sons, whose entire right, title and interest in the typewriter business it then held by purchase, had used the same, since the forepart of 1880.**

R., pp. 788-792.

This fact is admitted by the defendant-appellant in its answer.

R., p. 20.

The defendant-appellant in its answer while denying that the purchasing public and the trade relies upon the words "Remington typewriter" to distinguish complainant's machines, admits that they are sometimes so spoken of, or referred to.

R., pp. 18, 19. Subdivision V.

*A complete answer to defendant-appellants' contention in this regard is found in United States Letters Patent No. 629,438, dated July 25, 1899, issued to Mr. C. N. Fay, president of the "Remington-Sholes Company," on an application filed*

*Jan. 13, 1897, for improvements in ribbon feed mechanism for typewriting machines. The application was prepared by the defendant-appellants' counsel in this case, and sworn to by Mr. Fay. In said application complainant-appellee's writing machine is referred to as the Remington No. 2 machine.*

R., p. 858.

Defendant-appellants' witness **Romig** in his testimony designates complainant's product as the "Remington machines."

R., pp. 1118, 1134, 1135.

Appellants' witness **Russel** refers in his testimony to complainant's machine as "the old Remington," and the "Remington."

R., pp. 1147, 1148.

Appellants' witness, **Alexander Clement,** in his deposition, refers to the appellee's machine as the "Remington typewriter."

R., p. 1310.

**Mrs. Vance,** a witness for appellant, referred to appellee's machine as the "Remington."

R., pp. 206, 209, 211, 214, 215.

**Williams,** one of appellants' witnesses, also called appellee's machine the "Remington."

R., pp. 1221, 1222, 1223, 1224.

**McNaugher** spoke of appellee's machine as the "Remington."

R., p. 1227.

Defendant-appellants' witness, **Alkire,** designated appellee's machine as the "Remington typewriter."

R., p. 1243.

**Thomas O. Parker,** a salesman of appellant, testified that when Weingert called at appellant's store to purchase a typewriter, he inquired whether they had a "Remington machine," thus showing that the purchasing public so designate appellee's product.

Parker himself designated appellee's machine as the "Remington."

R., pp. 1280, 1283, 1284, 1287, 1288, 1292, 1294, 1295, 1296.

**Joshua T. Gillellan,** a witness for appellants, designated the appellee's machine at the "Remington."

R., p. 1330.

Appellants' witness, **John E. Kunkle,** designated appellee's machine as the "Remington."

R., p. 1364.

Appellants' witness, **Joseph A. White,** of Chicago, called appellee's machine the "Remington typewriter." *He stated that they frequently used the contraction or abbreviation "Rem" for Remington, in their business, and that this practice, of thus referring to appellee's machine, was quite general.*

R., pp. 1426, 1427.

The defendant-appellant, in its answer, sought to controvert the fact that complainant appellee's product had been for many years referred to, *known and designated as the "Remington" and "Remington typewriter," but wholly failed to make any proof in support of its allegation.*

While it is true that complainant-appellee has used the word "Standard," more or less in its advertisements and upon its machines, in connection with the word "Remington," nevertheless the proofs herein show that the words "Remington Typewriter" constitute a designation, or "short trade phrase," by means of which appellee's pro-

duct was and is identified, and that they were and are employed by the trade and the public to distinguish its machines and to effect the purchase and sale thereof. **In fine, by long use, in connection with appellee's product, and business the name of "Remington" has acquired a secondary meaning as denoting the machines of the complainant-appellee, and such was the fact when the Remington-Sholes machines were first put upon the market.**

Montgomery *v.* Thompson, 41 C. D., 35; A. C. (1891), 217.

Wotherspoon *v.* Currie, L. R., 5 H. L., 508.

Reddaway *v.* Banham (1896), A. C. 199.

Valentine Meat Juice Co. *v.* Valentine Extract Co., 83 L. T. N. S., 271.

Elgin Nat'l Watch Co. *v.* Ills. Watch Co. 179 U. S., 665.

## ERRORS ALLEGED IN THE DECREE OF THE COURT BELOW.

The Court below found, *inter alia:*

1. That since about the year 1873 the complainant and its predecessors have been engaged in the manufacture and sale of typewriting machines, which became well and favorably known and were marked and designated as "Remington machines."

2. That said writing machines were put upon the market by complainant and its predecessors, and introduced, advertised for sale and popularized, in this country and in foreign countries, under the name of "Remington" and "Remington Typewriter," by which names they came to be widely known and identified by purchasers and the public, and which before the acts of the defendant and its principal, Remington-Sholes Company, in the bill

of complaint mentioned, had been continuously and exclusively used to designate and identify complainant's machine.

It is asserted by the defendant-appellants that the Court below erred in thus holding and finding. (See Assignment of Errors, 1, 2, p. 1509.)

## FIRST ALLEGED ERROR.

The proofs established the fact that E. Remington & Sons began the manufacture of the model machines early in the year 1873, and that in 1874 their writing machines were upon the market.

R., pp. 40, 41, 44, 46, 61, 88, 95, 97.

The finding of the Court below was that the manufacture and sale of machines had been carried on "since *about* the year 1873." There is no doubt but that the machines became well and favorably known long prior to 1893.

R., pp, 72–74, 95, 96, 97, 237.

The machines were marked with and designated by the name "Remington."

R., pp. 64, 81, 83, 91, 103, 104, 190, 206.

The finding of the Court below does not import that the machines were *marked with or designated by the name "Remington" in the year 1873*, but only that the manufacture of machines began *about* 1873, and that they were subsequently marked and designated as "Remington machines." Moreover the question is one of *time* only, and is of no force in this case, since the facts found by the Court were undoubtedly true when the Remington-Sholes machine first came upon the market. As said by the learned counsel for the defendant-appellants, in their brief in the Court below: "When the Remington-Sholes Company and its predecessor entered

the field, complainant had a world-wide reputation." Obviously that reputation was acquired in the manufacture and sale of the "Remington Typewriter," and not otherwise.

## SECOND ALLEGED ERROR.

The proofs herein also show that the appellee and its predecessors introduced and advertised for sale, both in this country and in foreign countries, its machines, under the name and style of "Remington," and "Remington typewriter," and that by these designations appellee's product came to be widely known and identified by purchasers and the public.

R., pp. 52, 53, 54, 64, 65, 66, 75, 76, 92, 95, 97, 190, 207, 210, 211, 222–226, 229, 273, 274, 323, 849–857, 858, 875, 879.

Furthermore, it is perfectly clear, from the record in this cause, that *prior to the infringments alleged in the bill*, these designations had been continuously and exclusively used to designate and identify appellee's machines. Those parts of the record heitherto cited abundantly prove appellee's contention.

Moreover, there is no force in appellant's suggestion, that appellee's machines were not and are not known as the "Remington," but that its product was and is known to and indentified by the public by the designation "Remington Standard." Manifestly this is not so, inasmuch as appellants have proven herein that the word "Standard," when used in connection with a typewriter, does not point to or indicate its origin, or denote that it is the product of any particular maker.

R., 1016, 1034, 1085–1089.

It, therefore, follows that the name "Remington" indentifies appellee's machines and that the Court below did not err in respect to the first and second findings of fact set forth in its decree.

## APPELLANT HOWE SCALE COMPANY OF 1886.

This company is the *nominal* defendant and appellant in this case (*the real defendant and appellant being the "Fay-Sholes Company"*), a corporation created under and by a special act of the Legislature of the State of Vermont, passed and duly approved November 24, 1886.

R., pp. 1, 16.

This corporation became the general sales agent of the "Remington-Sholes Company"—now Fay-Sholes Company—in 1897, in and for the United States, and sold the "Remington-Sholes" typewriter, or "Rem-Sho" typewriter, through its various agencies and offices, and especially in the cities and localities referred to in the bill of complaint.

R., pp. 8, 27, 28.

Shortly before final hearing in the Court below, it discontinued the sale of the Remington-Sholes typewriter through certain of its agencies, but it did not wholly cease to sell said machines until the entry of the decree herein.

**The Howe Scale Company admits in its answer that it advertised for sale and sold said machines as the agent of the Remington-Sholes Company and as "Remington-Sholes typewriters," after the first day of May, 1897, and prior to the filing of the bill of complaint in this action.**

R., pp. 27, 28.

The fact that the Howe Scale Company discontinued the sale of these machines through certain of its agencies, or even if it were a fact (which it is not) that it had wholly discontinued the sale of said machines after the suit was commenced and

before the entry of the decree, did not disentitle the appellee to the relief granted.

Oxford University *v.* Wilmore-Andrews Pub. Co., 101 Fed. Rep., 443.
Clark Thread Co. *v.* The William Clark Co., 37 Atlantic Rept., 599.
Burnett *v.* Hahn, 88 Fed. Rep., 694.

## GRAVAMEN OF THE BILL.

The bill of complaint, after setting forth the history of the complainant company and its rights and interests as regards the use of the name "Remington," in connection with its typewriting machines and business, and after setting forth the fraudulent acts of the Remington-Sholes Company and its corporators in the selection and use of the name "Remington," charges that the Howe Scale Co. was fully cognizant of all the rights of the complainant-appellee as set forth in the bill, and of the fraudulent purpose and intention of the incorporators of the Remington-Sholes Company, in the selection and adoption of said corporate name and the use thereof, and of the intent and purpose of said corporation in the selection, adoption and use of the names "Remington," "Remington-Sholes," and "Rem-Sho" upon and in connection with the sale of its typewriting machines, and in advertising for sale, offering for sale and selling the same in the manner as charged in the bill of complaint; and the bill further avers that said defendant company, being animated by the same motives as the Remington-Sholes Company, designated, advertised, offered for sale and sold without complainant's consent and with intent as charged, large numbers of typewriting machines in sundry states and cities mentioned in the bill of complaint.

R., pp. 1-9.

In other words, the bill charges that the Howe Scale Co. and the Remington-Sholes Co. were and are co-conspirators and joint tortfeasors in the premises.

**The appellant, Howe Scale Company, in and by its answer, justifies all its acts in the premises under the alleged right and title of the Remington-Sholes Company, its principal, which is primarily liable, and which it admits has assumed the defence of this action, has paid all the expenses of the defence thereof, and has indemnified and agreed to save the Howe Scale Company harmless as to all matters relating to or growing out of this litigation.**

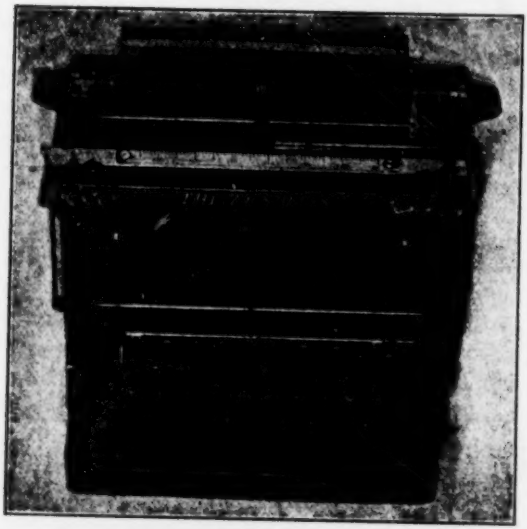
R., pp. 926, 1358.

## HISTORY OF THE REMINGTON-SHOLES OR REM-SHO TYPEWRITER AND THE REMINGTON-SHOLES COMPANY AND ITS PROMOTERS.

In or about the year 1892, one Zalmon G. Sholes, of Evanston, Illinois, previously residing at Milwaukee, Wisconsin, made a model typewriting machine which he designated **"The Z. G. Sholes" typewriter.** It was a working model. *This model was destroyed by fire and another one was subsequently constructed on the same general lines in the winter of the years 1892-93.* A photograph of the model machine, which was constructed in the winter of 1892-93, p. 8, is in evidence in this case, *designated "Complainant's Exh. Photograph Z. G. Sholes Machine." R., p. 930.* It is here reproduced.

This photograph was taken in March or April, 1893.

**Complainants' Exhibit—Photograph Z. G. Sholes Machine.**



After Sholes built the first model other persons acquired a pecuniary interest in it, and in applications for certain alleged improvements embodied therein. Sholes had filed applications for patents for certain features in this machine in 1891. One Smith and one Mulliken became interested in the model in 1892. It was then known as **"The Z. G. Sholes"** typewriter. Smith and Mulliken owned a three-quarters interest in this model and in the inventions therein, and Sholes owned the other one-quarter. Two other persons—Wadhams and Camp—became interested about April, 1893. *In or about April, 1893, Camp, Wadhams, Smith and Sholes organized a corporation under the laws of the State of Wisconsin, under the name and style of* **"The Z. G. Sholes Company."** The capitalization of the company was at first $10,000 but was subsequently increased to $100,000. *The purpose of the*

*organization of this company was to manufacture and sell a typewriting machine similar in structure to* **"The Z. G. Sholes"** *model. This machine was named for "Z. G. Sholes" because he invented that which was novel in it. The corporation was also named for Sholes because it was deemed best by the corporators to give the company the name of the inventor. The names of his associates who held three-quarters of the stock were not employed as a part of the corporate name. The name* **"The Z. G. Sholes"** *was painted on the top plate, at the front of the model, and in a conspicuous place so as to be readily observed by the eye.* See cut above.

R., pp. 390, 391, 392, 397.

After **"The Z. G. Sholes Company"** was formed machinery was purchased with which to manufacture tools to build typewriters like said model, which machinery was installed in a shop at Chicago. After starting on the tools and running for a few months, bank failures occurred in Milwaukee, and Messrs. Camp and Wadhams decided not to proceed with the undertaking, as they feared they could not raise the required amount of money to carry on the business, owing to the then existing panic (R., 400-2). Camp and Wadhams having withdrawn from the enterprise, Sholes sought to interest others in his model machine, and was introduced to one Carver Remington, who, with his brother Franklin Remington, became financially interested in the machine. **Messrs. Carver and Franklin Remington were at that time associated together in a contracting business in the City of Chicago, excavating on the drainage canal.** The two Remingtons acquired the three-quarters interest previously held by Smith, Mulliken, Camp and Wadhams about August, 1893. *On the 26th day of August, 1893, they entered into an agreement with Sholes, which is in evidence in this case, and is marked "Complainant's Exhibit, Sholes-Remington agreement, August 26, 1893"* (R., pp.

825–827). Under this agreement Sholes and the Remingtons became jointly interested in the machine, applications for patents, and the stock of the **"The Z. G. Sholes Company."** The Remingtons and Sholes endeavored to interest capitalists in **"The Z. G. Sholes"** model of a writing machine, and to that end exhibited the model to a good many people. Prior to the time when the Remingtons acquired their interest in the Sholes model, etc., *Sholes had been negotiating with and endeavoring to sell the same to Mr. Seamans, of Wyckoff, Seamans & Benedict.* After the Remingtons acquired their interest, and in the fall of 1893, they came east with Sholes, visiting Utica, New York, and New York City, and endeavored to interest the "Remington Arms Company" of Ilion in the manufacture of typewriters like said model.

**The Remingtons acquired their interest in "The Z. G. Sholes" typewriter for speculative purposes,** and the visit to Ilion and to the Remington Arms Company's works was for the purpose of *creating a stir* and selling the model machine, if opportunity offered. The object of the visit was, also, to make Mr. Seamans and others, connected with the Remington typewriter enterprise, *a little anxious*, and to induce them to purchase the model and the alleged improvements embodied therein. The model machine was taken along on the eastern trip, and shown to a great many persons at Ilion, where appellees' works are located, and elsewhere.

R., 404, 405, 414, 415.

**At the time of this visit to Ilion, the model machine was then known, designated and marked as "The Z. G. Sholes." About November, 1893, and after the purpose of the eastern visit had failed, the name of the machine was changed from "The Z. G. Sholes" to "Remington-Sholes." At the time of such change the Remingtons and Sholes were endeavoring to interest, and afterwards did interest, certain Chicago capitalists therein.**

R., 417, 418, 425, 426.

The Remingtons purchased their interests in the model, etc., for eight or nine thousand dollars, and, in addition to this sum, they allege that they paid out and expended (to Sholes and to a mechanic, who made some slight changes in the model, for travelling expenses, in endeavoring to interest capital therein, shop rent, attorneys' fees, etc.) an additional sum, amounting in all to about $15,000.

R., pp. 412, 413.

At the time the name of the model was changed from "**The Z. G. Sholes**" to "Remington-Sholes," Sholes testified that he realized his association with the Remington boys was a good combination; and *that the idea grew upon him that in view of the association of the name Remington with the typewriter business*, it was a happy combination; **that he realized that it was a good combination in view of the fact that there had been a machine upon the market in connection with which the name "Remington" was used; that if the names of Messrs. Remington had been Smith or Peterson he would not have changed the name of his model. He always thought that the name "Remington" in connection with his model was of value; that he thought it would be an advantage in the sale of his machine to have it sold under the name "Remington-Sholes," and that he thought the name "Remington" a valuable addition to his name because the name "Remington" had been used in connection with another business and another typewriting machine.**

R., pp. 424–427.

Sholes, magnanimously took upon himself the responsibility for the change of the name of the model, but as counsel for the appellant said, in the Court below, *it was surprising* that he should have done so without their knowledge. His statement in this regards seems incredible in view of the fact that the so-called "Remington boys" were at that time part-owners and jointly co-operating with him

in an endeavor to interest capital in this model. Moreover the Remington's ratified the change and *they were all parties to the frudulent scheme of changing the name of the model and attaching thereto one that had for many years been associated with a writing machine of world-wide reputation, then manufactured and sold by complainant-appellee.*

**The change of name was both unnecessary and improper, and the motive and intent therefor were manifestly to avail of the established reputation of appellee's writing machines.**

The contention of appellants that at the time the name of the model was changed, Sholes and the Remingtons had labored together for many months and had reconstructed the model machine, is incorrect, as the proofs show that the Remingtons did not acquire their interest in the model until about the 26th day of August 1893 (R., pp. 824–825) and the name was changed about November, 1893 (R., p. 417) and shortly after they returned from their Eastern trip. The labor alleged to have been performed by them consisted, principally, in the journey to Ilion, N. Y., to sell the model, etc., as heitherto stated, and covered a period of two or three months. During that time and prior to the organization of the Remington-Sholes Typewriter Company, hereafter refered to, the model was not "*reconstructed*," as the proofs show that no material or substantial changes were made therein. Furthermore prior to the time of the organization of the Remington-Sholes Typewriter Company, that is prior to May 1894, no writing machine was built by the Z. G. Sholes Company, and none was ever constructed by the Remingtons and none by Sholes, except the model destroyed by fire, and the one constructed by him, which furnished the basis for the organization of the Remington-Sholes Typewriter Company.

R., pp. 390, 400, 401, 405, 414, 416, 417, 419, 427.

Judge Lacombe, speaking for the Circuit Court of Appeals was entirely right when he said: "In November, 1893, the name of the machine was changed from the 'Z. G. Sholes' to the 'Remington-Sholes,' that is to say the name of the model was changed, and the parties interested began to talk of the machine as the 'Remington-Sholes,' but no such machine had apparently been manufactured and offered for sale."

In another part of his opinion the same learned Judge observed: "Some suggestion has been made that the machines existed before the incorporation; that they were produced by the Remingtons and Sholes individually at the time when the Remingtons had gone into the typewriting business with Sholes on their own account and had a right to sell their goods under their own name. The record is very voluminous, and we may have overlooked some item of proof, but a careful examination of it does not sustain this proposition. Prior to the formation of the Remington-Sholes Typewriter Company, no machines had been sold or offered for sale. Two (2) or more had been made as models, and the name on one of them (the second one constructed) was changed from the 'Z. G. Sholes' to the 'Remington-Sholes,' but they had not become associated with the machine except in the talk of the future corporators among themselves; the public knew nothing of any such name in connection with the typewriter, indeed did not know the junior Remingtons or even Sholes as a producer of typewriters."

## GENESIS OF REMINGTON-SHOLES TYPEWRITER CO.

About six months after the Remingtons acquired an interest in "The Z. G. Sholes" model machine, and shortly after the change of its name, Franklin H. Head and Charles Norman Fay, two large capitalists, became interested therein, and Mr. Fay, in or about the month of April, 1894, entered into an arrangement with Sholes and the Remingtons whereby he became the chief promotor of the enterprise. In the month of May, 1894, Fay and his associates, Remingtons and Sholes, caused a corporation to be organized under the laws of the State of Illinois, under the name of "Remington Sholes Typewriter Company." This company was created with a capital stock of $150,000, that is 1500 shares of stock, each share being of the par value of $100. Beyond question the corporate name was selected by Fay and his associates with full knowledge of the fact that the name "Remington" was one that had long been extensively and exclusively used in connection with appellee's writing machines and business. Counsel for appellants admitted in their brief in the Courts below that "Doubtless Mr. Head and Mr. Fay (corporators) also agreed with Mr. Sholes that the name 'Remington-Sholes' was 'a good combination.' It offered a 'talking point' for that machine." "The choice was an intelligent one." The subscribers to the capital stock were Z. G. Sholes, 374 shares, Franklin Remington, 561 shares, Carver Remington, 562 shares, and Norman Hapgood, 1, Charles H. Hamill, 1, and Leverett Thompson, one share. *No cash was actually paid for the stock, which was subscribed for by Sholes and by the Remingtons, but the whole capital stock was made full paid by turning in the model machine, etc., to the company therefor. The stock was afterwards divided between Sholes, the Remingtons, Fay and Head. Fay received $50,000 worth of the stock for his services as pro-*

*moter*. The first Board of Directors, selected in and by the Articles of Incorporation, consisted of Charles N. Fay, Franklin H. Head, Charles S. Holt, William P. Sidley, Charles H. Hamill, Norman Hapgood and Leverett Thompson. The names of Sholes and the Remingtons did not appear in the first Board of Directors, but they subsequently became directors of the Company. After the organization of said Company, the capital stock was increased to $250,000.

R., pp. 406–409, 828–835.

The Remington-Sholes Typewriter Company, being organized, leased a small factory, purchased machinery, with which to build tools to turn out the machines, the first of which was marketed about December, 1894. The machines as manufactured and sold were in structure and mode of operation substantially like **"The. Z. G. Sholes"** model, which was *wholly* the invention of Sholes. Neither of the Remingtons had previously been in the typewriter business or made any inventions or improvements in typewriters.

R., pp. 58–60, 100, 101, 390, 410, 412, 417.

This Company continued to manufacture and sell writing machines designated as the "Remington-Sholes" typewriter, until about December, 1896. During that period it manufactured several hundred machines, some of which were sold in the United States and some in foreign countries.

R., pp. 410, 411, 420, 438.

Fay and his associates well understood the value of the name "Remington" when they organized the so-called "Remington-Sholes Typewriter Company"; that they did, is clearly manifest from the testimony of F. Lyman Browne, who had an interview with Fay in New York City in the summer of 1894, in regard to taking the agency for the sale

of the so-called "Remington-Sholes" machine. Fay then referred to the fact that the name "Remington" would be of material assistance in selling the machine.

R., p. 447.

*This was shortly after the company was organized and before any machines had been made, advertised or sold, and before the company had obtained any business or the good will of any business.*

Sholes testified that in the latter part of the year 1895, Fay remarked to him that he had paid too much for the machine as *the only value he attached to it was the name "Remington-Sholes."*

R., p. 419.

Fay and the other corporators regarded the name as "a most valuable asset."

R., p. 23.

Obviously the valuable part of this hyphenated name was the word "Remington," which suggested to purchasers of machines the "Remington concern whose name was a 'by-word for good workmanship the world over.'"

## RE-ORGANIZATION AS REMINGTON-SHOLES CO.

In November, 1896, Remington-Sholes Typewriter Company, having become largely indebted, principally to Fay, an attempt was made to devise a plan of finance which would relieve the company from its then pressing indebtedness, and the plan not being ratified and confirmed by the stock-holders, it was, at a special meeting of the stock-holders, voted to wind up the company's business, sell its assets, surrender its charter, etc., which accordingly was done. The assets were purchased by Fay, who was president and principal creditor and stock-holder of

that company, *as Trustee for himself and other stock-holders*, for the sum of $51,188.69, that amount being just sufficient to pay all corporate debts. Fay purchased the property for the purpose of re-organizing the business, and thereafter devised a plan of re organization whereby the stock in the new company was to be allotted amongst the old stock-holders in keeping with the amounts of cash actually invested by them in the Remington-Sholes Typewriter Company. Fay ran the factory for a few months and until he had completed his scheme of re-organization. During that time he manufactured the machines at the same place, and sold them as theretofore under the name "Remington-Sholes" typewriter.

R., pp. 410, 411, 431, 435, 835, 843, 1355, 1356.

In April, 1897, Fay re organized the old company and business by incorporating a new corporation under the name **Remington-Sholes Company** to take over the property and assets *which he had purchased and temporarily held as Trustee for himself and other stock-holders of Remington-Sholes Typewriter Co.* The capital was fixed at $300,000, that is to say, 3000 shares of the par value of $100 each. The subscribers to the capital stock were Fay and others. Several of the subscriptions were made merely for the purposes of organization of the company, as for example, Franklin Remington's, *who subscribed for 500 shares of stock for the purpose of organization only.* He ultimately received only 150 shares ($15,000 worth) of the *common* stock. The stock of the Remington-Sholes Company appears to have been divided into preferred and common shares, the common stock being issued to subscribers, the pretended consideration therefor being the procuring a good title to the property theretofore used by Fay and the Remington Sholes Typewriter Company.

R., pp. 567, 411, 413, 420, 430, 835–842, 843–849, 1356.

Thus it is manifest that the sale of the property and assets of the Remington-Sholes Typewriter Company, and the purchase thereof by Fay and the organization of the new corporation—Remington-Sholes Company—were simply part of a scheme of re-organization evolved by Fay and others for the purpose of liquidating the indebtedness of the old concern. Sholes and Carver Remington were not included in the re-organization scheme. *To Franklin Remington a small amount of stock was donated*, and he was still called, general manager of the business, to furnish *a colorable excuse* for the company's use of the name "Remington." *His interest was only nominal.*

The new or re-organized company admittedly stands in the shoes of the old one and is but a continuation of the original *fraudulent scheme* by substantially the same parties. Under the pleadings and proofs the fraudulent character of the old as well as the new corporation was in issue. The Howe Scale Company has sought to justify its wrongful acts under a pretended right and title derived from the Remington-Sholes Typewriter Company, C. N. Fay and the Remington-Sholes Company.

R., pp. 21-25, 406-420.

The Remington-Sholes Company continued to manufacture the same machine, theretofore invented by Sholes, with the addition of a few minor improvements, made by Fay. The designation of the machine "Remington-Sholes," was *abbreviated or shortened* to "Rem-Sho," which was the abbreviated Telegrapic Code address, theretofore adopted and used by the "Remington-Sholes Typewriter Company." All machines and advertisements, however, bore the name "Remington-Sholes," and the name "Rem-Sho" was and is understood by the trade and the public to be *merely an abbreviation* of the name "Remington-Sholes." Since the organization of the Remington-Sholes Company, now

Fay-Sholes Company, it has continued to manfacture typewriting machines and to sell them, both in this country and in foreign countries; that is to say, *in the same localities and countries* where the complainant's machines have been, were and are offered for sale, sold and used.

## ZALMON G. SHOLES.

Mr. Sholes is the son of one C. Latham Sholes whose improvements in typewriting machines were embodied in what came to be known as the Remington No. 1 typewriter. This machine as already stated was at first designated the "Sholes & Glidden" tywewriter; C. Latham Sholes and Carlos Glidden, being the originators of the principal improvements embodied therein. It was subsequently greatly changed and improved, and after about 1877 or 1878, when the Remington No. 2 machine was put upon the market *it could not truthfully be said that Zalmon G. Sholes' father was the inventor or even the principal inventor of the "Remington" typewriter.* This is clearly proven by the evidence and exhibits in this case.

R., pp. 857-858.

Zalmon G. Sholes first turned his attention to the making of improvements in typewriting machines about 1891, and thereafter, as we have already seen, he produced a model of a writing machine which was called **"The Z. G. Sholes,"** but was afterwards christened and subsequently manufactured and sold as the "Remington-Sholes" and "Rem-Sho" typewriter. *As the inventor and designer of that model it was naturally designated "The Z. G. Sholes," and a company organized for the manufacture thereof under the name and style of "The Z. G. Sholes Company."* Sholes, as we have already seen, participated in the organization of the Remington-Sholes

Typewriter Company, but after his improvements had been secured and the business was reorganized as the Remington-Sholes Company, his services were not deemed of sufficient importance to continue him either as a stock-holder or as an employee of the company.

R., pp. 42, 43, 55, 64, 90, 102, 205, 390, 391, 411, 843, 849.

Z. G. Sholes' father was never engaged in typewriter manufacture, and his only experience prior to the construction of this model in 1892, was in the Remington factory at Ilion in 1883. He worked there for a short while without compensation.

R., p. 441.

**Manifestly "Remington" was the name of value and the word "Sholes" was suffixed thereto in order to introduce a colorable variation which might supply the infringers with a plausable excuse for their fraud.**

## CARVER REMINGTON.

Carver Remington, who purchased three-eighths (⅜) interest in **"The Z. G. Sholes"** model, and was one of the corporators of the "Remington-Sholes Typewriter Company," is the son of Samuel Remington, deceased, who was an officer and a stockholder of E. Remington & Sons until his decease in 1882. In his youth Carver lived in Ilion, where his father then resided. About 1864 or 1865, the family removed to Utica, N. Y., where they resided until about 1868, when he went to Europe where he remained continuously until early in 1875. In 1875, Carver returned to this country and soon after his return he entered the service of the Hannibal & St. Joe Railroad Company, where he remained about a year and then returned to Ilion. He did

not engage in any kind of business there, although his uncle at his father's request, endeavored to interest him in the office of the works of E. Remington & Sons. In 1877, when his father returned from Europe, Carver had no business. *After his father's return, in 1877, Carver was induced to pay some attention although quite spasmodic, to business, which consisted in keeping some of the account books in the office* and he had one share of stock in E. Remington & Sons corporation, given to him by his father to qualify him as one of the directors of the corporation, and he was appointed secretary. This was done with a view to interesting him in the business. *His duties were, however more nominal than real*, as there were no regular meetings of the Board of Trustees, and the records that were kept were very few and very slight, and there is no evidence that Carver even kept those. *He took no part in the mechanical department of the works at all, and in fact his connection with the works was of a very slight character.* He did not evince any disposition to tie down to business.

*He had no knowledge of or skill in the typewriter business.* After his father's death and in the early part of 1883 he engaged in sundry kinds of business and at various places and was residing at Chicago and engaged in a contracting business with his brother, Franklin Remington, when he became interested in "The Z. G. Sholes" typewriter.

R., pp. 58, 59, 60, 100, 101, 401, 402.

## FRANKLIN REMINGTON.

Franklin Remington was born about the time the corporation E. Remington & Sons was created. He lived abroad with his parents from about 1868 until 1878, when he returned to this country. After completing his education in 1887, he went to Cazanovia, New York, and spent some time on a farm, which his father owned at the time of his death,

and from there he went to Chicago and engaged in *contracting* business. *He never had anything whatever to do with the typewriter business carried on by E. Remington & Sons, from 1873 to 1886, nor was he ever engaged in that kind of business until he became associated with the "Remington-Sholes Typewriter Company,"* and later with the "Remington-Sholes Company," neither of which selected the name "Remington" as a part of its corporate name, because the reputation of its stockholder Franklin Remington was such that the use of his name would increase the chance of business success on its own merits, but because the name, "Remington," had been long used by appellee and its predecessors in the typewriter business, and would give a title so similar to the trade-name of appellee's machine and business that purchasers might be induced to buy the machines of appellants in the belief that they were the product of appellee's manufactory, or had some connection with it and its predecessor's business.

R., 57, 61, 100, 412.

## SAMUEL REMINGTON.

The proofs in this case show that E. Remington & Sons began the manufacture of certain models of typewriters in the year 1873, and the manufacture of commercial typewriters which were put upon the market early in 1874. Samuel Remington did not participate in the making of the original contract, but at that time was abroad. He did not return until November, 1877.

R., pp. 38, 43.

After Mr. Remington's return from Europe in 1878, he resided in New York City. The greater portion of his time after his return was spent in the New York office and warehouse of E. Remington

& Sons, of which he took principal charge and management, making only occasional visits to Ilion. *His attitude towards the typewriter business and the manufacture and sale of writing machines was very unfriendly. He opposed it and remarked several times that E. Remington & Sons ought never to have taken hold of it, that their legitimate business was the manufacture of arms, and that they had never made any money outside of that branch of their business.* He had frequent conversations with one James Densmore on the subject of getting rid of the typewriter and threatened to "kick it out."

R., pp. 55, 56, 57.

*Samuel Remington never had anything to do in a practical way with the manufacture of the typewriting machines.* He never suggested any improvement in the machines or in the manufacture thereof. He was very little at Ilion, after his return from Europe in 1877, and when there was almost exclusively engaged in matters of finance and in correspondence with parties abroad, *with reference to the procuring of orders for the manufacture of military arms, which was his particular branch of the business.*

R., p. 57.

The business at the works was looked after by the oldest brother, Philo Remington, who was always recognized as the head of the manufacturing department, not only with reference to typewriters, but in respect of all the products of E. Remington & Sons.

R., p. 57.

In the light of the evidence in this case, the suggestion of appellants' counsel that Sholes and the Remingtons took the name "Remington" for the machine, etc., on account of "pride of ancestry" and in order "that history might repeat itself" appears wholly inadmissible and even absurd.

*Samuel Remington died in December, 1882, and in September, 1883, the administrators of his estate transferred to the eldest brother, Philo Remington, all of Samuel's interest in the corporation E. Remington & Sons, consisting mainly of shares of capital stock which he had owned in that corporation.*

R., p. 60.

*At the time of Samuel Remington's decease his son Franklin was about 18 years of age.* It is, therefore, plain that the knowledge of Samuel Remington of the typewriter business and his interest therein were not such as to inspire his sons Carver and Franklin with any love for that business or cause them to engage therein, as alleged by the defendant-appellants in their answer in this case.

R., p. 21.

## CHARLES NORMAN FAY.

Mr. Fay was one of the "strong capitalists" who formed the Remington-Sholes Typewriter Company to manufacture the "Remington-Sholes" machines, and put them on the market, and is the person under whose personal supervision the No. 2 model "Remington-Sholes" or "Rem-Sho" was brought out, as set forth in the catalogue of the "Remington-Sholes Company." *Fay was the chief promoter of the Remington-Sholes Typewriter Company, and received one-third of the capital stock of that company as compensation for his services in organizing it.* According to Mr. Sholes' testimony, Mr. Fay had charge of the organization of the Remington Sholes Typewriter Company, was one of the first directors of the company, and became the president thereof. His holdings of stock during the existence of the Remington-Sholes Typewriter Company were large, as appears by "Complainant's Exhibit Certificate of Dissolution of the Remington-

Sholes Typewriter Company" (R., p. 838). In December, 1896, he held 1,171 shares of the capital stock in his own right and 392 shares as trustee, the whole capitalization then being 2,500 shares. Fay and the other corporators knew the great value of the name "Remington" at the time they chose it as a part of the corporate name. That name was then of world-wide repute, and offered something more than a "talking point for their machine." This is shown by the evidence of Browne, who testified that Fay spoke of it as an inducement to him when he was considering the advisability of becoming an agent for the sale of the so-called "Remington-Sholes" typewriter. *That was in August, 1894, before the company had manufactured or sold any machines, and after they had been notified of complainant's rights and claims in the premises.* During the earlier history of the "Remington-Sholes Typewriter Company," while Fay was its president, the largest stockholder and controlling factor in the company, he allowed Sholes, Franklin Remington and others to look after the details of the business. It appears that he was absent in Europe for a portion of the year 1895, and that on his return he found the business so unsatisfactory that he was prompted to remark to Sholes that "he had paid too much for the machine, and *the only value he attached to it was the name.*" Undoubtedly Fay's remark had reference mainly, if not wholly, to the name "Remington," as he knew that name was of great value in the typewriter trade, by reason of its long use in connection with complainant's business and the repute of the "Remington" typewriter throughout the civilized world.

R., pp. 291, 292, 408, 409, 419, 447, 813, 807, 839.

## WHAT PROMOTERS KNEW AT THE TIME OF THE ORGANIZATION OF THE REMINGTON-SHOLES TYPEWRITER COMPANY AND THE REMINGTON-SHOLES COMPANY.

At the time of the organization of the Remington-Sholes Typewriter Company *the corporators—Fay, the Remingtons and Sholes—were all acting together in furtherance of the same unlawful purpose, and the reorganization of said company was only a reproduction and continuation of the old fraudulent scheme. In other words, the Remington-Sholes Company stands in no better position than did its predecessor, the Remington-Sholes Typewriter Company*, under whose pretended title to the name Remington it justifies in this case. The Remingtons and Fay and Sholes all knew the history of complainant-appellee's business; knew that the product of its factory was known as the "Remington" typewriter; knew that large sums had been expended in advertising its machines and business; knew that an immense trade had been built up by appellee and its predecessors, and that a large demand existed for its machines; knew that the name "Remington" was valuable in the typewriter trade on account of the reputation given to it by complainant-appellee and its predecessors, and not on account of the reputation of Franklin Remington or Carver Remington, neither of whom was ever engaged in, or had any knowledge of, or skill in, the typewriter business. The choice of the name was admitted to have been an "intelligent" one; "those who selected it well knew that the use of the name Remington in connection with a typewriting machine would help to sell it, as the name of Brown or Peterson would not. They knew, too, that it would be thus helpful, because it suggested to the purchaser that it had been made by the Remington concern, whose name was a 'by-word for good workmanship the world over.' They knew that

the presence of that name on the machine would be a constant temptation, often yielded to by whomever sold one to the uninstructed purchaser, to represent that it was the 'real,' or the 'improved,' Remington; that the presence of the name made confusion easy; and that the results of any confusion would be entirely in their favor. It was because of that knowledge that the Remingtons' associates—Sholes, the sole inventor of the machine, and Fay, the capitalist, whose contributions enabled the new concern to manufacture on a scale large enough to bring it into the field as a competitor—selected the Remingtons' name, not because they were willing to pay some graceful compliment to Franklin Remington for the energy and enthusiasm with which he entered upon his new sphere of activity, or to himself and his brother for the $15,000 they invested in the enterprise."

*Neither of the Remingtons nor Fay presented themselves as witnesses in this cause for the purpose of explaining their connection with the organization of the Remington-Sholes Typewriter Company or the Remington-Sholes Company;* but the evidence of Sholes, taken in connection with other facts and circumstances disclosed in the record, fully justifies the inference that all of the corporators had full knowledge of the facts in the premises prior to and at the time of the organization of the Remington-Sholes Typewriter Co.

R., pp. 805, 806.

**Having full knowledge, it is no defense that the name "Remington" or "Remington Company" or "Remington Typewriter Company" was assumed in good faith and without design to mislead the public and acquire appellee's trade.**

Higgins Co. *v.* Higgins Soap Co., 144 N. Y., 462, 471; Roy Watch-Case Co. *v.* Camm-Roy Watch-Case Co., 58 N. Y., Suppt., 979, 981; Fuller *v.* Huff, 104 Fed. Rep., 141, 145; Johnston *v.* Orr-Ewing, 7 App. Cas., 219 (1882).

**Z. G. Sholes,** one of the active promoters of the "Remington-Sholes Typewriter Company," testified that after he became associated with the Remingtons, he became satisfied that it would be an advantage, in the sale of **"The Z. G. Sholes"** typewriter, to have it sold under the name "Remington-Sholes." *He though the name "Remington" was a valuable addition to his name because that name had been used in connection with appellee's business and machines.*

R., p. 426.

He further testified that if the names of the Messrs. Remington had been Smith or Peterson he would not have changed the name of his model machine.

R., pp. 424, 425.

*Mr. Fay, one of the "strong capitalists, who as chief promoter received $50,000 worth of the stock of the Remington-Sholes Typewriter Company for his services in organizing that company and securing working capital therefor, shortly after the organization of said company urged one Browne to take the agency for the sale of the "Remington-Sholes" typewriter because the name Remington would be of material assistance in selling the new machine.*

R., p. 447.

At that time nothing had been done by the Remington-Sholes Company or its promoters to make the name "Remington," or even the name "Remington-Sholes," of value, as it had not then manufactured, or sold, or advertised for sale any typewriting machines. The name "Remington" had been made valuable in the typewriter business on account of the reputation given to it by the appellee and its predecessors. It is therefore plain that the "Remington Sholes Typewriter Company" was formed so that the name "Remington" could be used on its machines and given the advantage which that name had in the market.

Manifestly a *new* machine placed upon the market under a *new* name would not attract or readily secure the attention and patronage of the public, but *christened* as "Remington-Sholes" it would be readily accepted as the product of appellee, "the Remington concern."

**Directly after the Remington-Sholes Typewriter Company was organized its officers and directors were requested in writing to desist from the use of the name "Remington" as a part of the corporate name of the Remington-Sholes Typewriter Company and in connection with the manufacture and sale of its writing machines. Subsequently a similar written notice was served upon the Remington-Sholes Company and the Howe Scale Company of 1886.**

R., pp. 291, 292, 805–809.

The letter of Franklin Remington, of date Jan. 22, 1896 (R., p. 1444), acknowledging the receipt of complainant's communication of June 16, 1895 (1894), and other letters show that notwithstanding Franklin Remington, Sholes and their associates had full knowledge of all the facts, they nevertheless persisted in the use of the name "Remington," thereby ignoring complainant's objection and protest. This proves the value which they attached to said name, and indicates their deliberate intention to use it without reference to appellee's prior rights.

## REASONS FOR SELECTING THE NAME REMINGTON.

There is no doubt that the promoters and incorporators of the Remington-Sholes Typewriter Company and the Remington-Sholes Company intended to obtain some of the value of the name "Remington" and "Remington Company," etc., and that the name was adopted and used to enable said corporations to avail of the established reputation of the appellee's business and machines, which were well known in the trade and by purchasers and users under those names. *The names of Franklin Remington and Carver Remington were not of the slightest value in the typewriting business, in which they had never been engaged. They were unknown to the trade and had never acquired any reputation in the market in connection with the manufacture or sale of typewriters. The name was not adopted to obtain the benefit which would accrue to the corporation from the services or the reputation of these Remingtons, but solely to gain the benefit of the great reputation which belonged to the business of appellee and its writing machines.* The name was chosen in order to have it believed that "Remington-Sholes Typewriter Company" and "Remington-Sholes Company" were "*Remington*" corporations, and were marketing and dealing in "*Remington*" machines, or a species thereof, or *a new and an improved Remington typewriter.* Manifestly the name Remington was adopted because likely to facilitate the sale of the machines manufactured and sold by said companies. No doubt the phenomenal growth and extent of complainant-appellee's business suggested to the promoters of the Illinois corporation, the feasibility of deriving a substantial benefit from the reputation of appellee's business, generally known as that of the "Remington Typewriter Company," and "Remington Company," and the appellee's machine known as the "Remington" and "Remington typewriter."

*The use of the name is sought to be justified because of the fact that one or more of the corporators' names happened to be Remington;* but we shall presently show that that fact furnished no justification for the adoption and use of this name. Had it been the wish of the incorporators of the Remington-Sholes Typewriter Company, or the Remington-Sholes Company, to establish a *distinctive* reputation for their machines with the public, *and to so mark and designate them that they would always be unmistakably recognized by intending purchasers*, they would not have begun by assimilating the names of their companies, or their machines, with those of the complainant-appellee—a competing manufacturer and vendor of writing machines. The fact that they did this warrants the inference that for some reason or other they preferred to have their company styled and their machines marked and designated, *not with a distinctive name, such, for example, as "Fay-Sholes"—since adopted—but by one resembling a competitor; and when it is seen that such competitor is the manufacturer of the most famous and extensively used writing machine in the world, and in 1899 had expended more than $1,000 000 in advertising its machines, the reason therefor is perfectly obvious.*

Men act from motives, and no motive for adopting the name "Remington," "Remington-Sholes Typewriter Company," or "Remington-Sholes Company," is shown except the motive of gain from the use of a name of world-wide repute, long the distinctive appellation of appellee's and its predecessor's machines and business. It was an UNNECESSARY USE, by the Illinois corporations, of a name theretofore exclusively used by appellee and its predecessors, in connection with writing machines, and if nothing was wanted of the reputation which had been acquired under the name "Remington," and which that name stood for, it could have been left and another selected, or the business could

have been carried on and the machines put upon the market under the designations first selected, to wit: "THE Z. G. SHOLES COMPANY," and "THE Z. G. SHOLES" TYPEWRITER, or "**Fay-Sholes Company,**" and "**Fay-Sholes Typewriter,**" since adopted. The corporators undoubtedly took the name Remington-Sholes Typewriter Company and Remington-Sholes Company, for their corporations, *in order that they might plausibly assert and induce the belief that their product was a Remington writing machine, or a species thereof, or a "new" and an "improved" Remington typewriter*, and that their machines were the "real" "Remington" typewriters, and that they were the *successors* of or a branch of the old Remington concern.

**To impress upon the public the belief that the business of this Illinois corporation was a continuation of the character and business of the old Remington concern and its machines "real" Remington typewriters they stated in their advertisements, and their agents and dealers proclaimed by word of mouth, that their writing machine was "the only typewriter manufactured to-day by a Remington," and that "it represents the second generation of typewriter manufacturers bearing this great name."**

R., pp. 226, 227, 973, 1038, 1055, 1197, 1198, 1348, 881, 972.

In the Remington-Sholes Company's catalogues advertising its No. 2 and 3 machines, *on the back side of the title page*, were conspicuously printed these words: "**The only machine now made by a Remington.**" These catalogues are shown to have been circulated by the company and its agents. This clearly shows it was the intent and purpose of the "Remington-Sholes Company," and its officers and agents, to trade upon the name "Remington," and that they regard that name as very valuable in the typewriter trade on account of the reputation given to it by complainant-appellee and its pre-

decessors. Obviously their only motive in adopting that name was to decoy the public, and to surreptitiously obtain the advantage of the good reputation which appellee and its predecessors had given to machines bearing the name "Remington."

## GROUNDS OF DEFENSE RELIED UPON BY DEFENDANTS-APPELLANTS.

**The defense in this case is based, mainly, upon the broad proposition that inasmuch as one of the incorporators and stockholders of the Remington-Sholes Typewriter Company, and Remington-Sholes Company, bore the surname Remington, and might have engaged in the typewriter business under his own name, and had consented to the use of his name, ergo, no right of the complainant-appellee was invaded by giving to said corporations, formed by him and others, the name of Remington-Sholes Typewriter Company, and Remington-Sholes Company, and designating their product as the "Remington-Sholes" typewriter and "Rem-Sho" typewriter.**

The defendants-appellants set forth this view in their catalogues, wherein it is said: "we are sometimes asked about the right of the Messrs. Remington and Sholes to the use of their own names in connection with typewriters. In answer we would say that the law is absolutely clear that every man has a right to use or permit the use of his own name (which is his birth-right) in business, provided it is so used as not to deceive."

In support of this contention defendant's answer alleges "that said Franklin Remington and said Carver Remington were sons of Samuel Remington, who was one of the officers of the corporation E. Remington & Sons referred to in the bill of com-

plaint, and that said Zalmon G. Sholes was the son of one C. Latham Sholes, who for many years prior to his death (in or about the year 1891) was engaged as an inventor of typewriting machines; *that said Franklin Remington, said Carver Remington and said Zalmon G. Sholes did during the lifetime of their respective fathers acquire a special interest in and knowledge of the manufacture of typewriting machines, and naturally, therefore, devoted themselves to the business in which their respective fathers had become conspicuously proficient.* That prior to his joining with said Franklin Remington and said Carver Remington, said Zalmon G. Sholes had invented a certain new and useful typewriting machine, and, desiring to place the same upon the market, enlisted the interest of said Franklin Remington and said Carver Remington, who thereupon proceeded to devote much time and money to the development and exploiting of said invention and for the purpose of interesting capital therein. That inasmuch as the said new typewriting machine had been invented by said Zalmon G. Sholes and had been built with the aid of and under the personal direction of said Franklin Remington and said Carver Remington, the name Remington-Sholes was thereupon naturally given to said machine, the production of which had been due to the joint efforts of said Remingtons and said Sholes."

R., pp. 20, 21.

Another paragraph of defendant-appellent's answer alleges as follows: "And respondent therefore avers that when said Franklin Remington, said Carver Remington and said Zalmon G. Sholes undertook the manufacture of typewriting machines devised and constructed by them, they had a full and lawful right to designate the said machine as the 'Remington-Sholes' machine, and that when they caused a corporation to be organized for the purpose of manufacturing their machine, they had a full and lawful right to designate and name said

corporation as the 'Remington-Sholes Typewriter Company,' and to give to said corporation as they did the exclusive right to use said name in connection with the manufacture and sale of said machine." * * *

R., p. 22.

In their brief and in argument, in the court below, counsel for appellants assigned, substantially, the following reasons why the name Remington-Sholes Company, etc., was used:

I. It was reasonable that Remington and Sholes should form a corporation for the manufacture of their typewriter, because alone they had not the necessary capital to manufacture it, and because all other typewriters are made by a corporation.

II. That it was reasonable that they should adopt the name Remington-Sholes for their machine, because both had labored incessantly for many months in the production of it, Sholes contributing the inventive genius, and Remington giving his time and furnishing the funds for the reconstruction and exploiting of the model machine.

III. That it was reasonable that the corporation created to make the machine should bear the names of both; (*a*) because the machine was distinctly the product of both and owed its existence to both; (*b*) because it was the almost universal custom in the typewriter trade to identify the corporation and machine by the same name; (*c*) because Sholes' father invented, and Remington's father was president of appellee's predecessor, E. Remington & Sons, which gave the world the pioneer typewriter, *i. e.*, the "Remington;" (*d*) because the public would be interested in the coming together of these two sons; (*e*) because the name Remington had a world-wide reputation in many lines of trade older than and distinct from the good will of the typewriter business; (*f*) be-

cause the public is attracted by family reputation in trade, etc.; (*g*) because the court and the public recognize the value of a father's good name, and his son's right to avail of it; (*h*) because having the right to use their names like ordinary property they had the right to bestow such names upon a corporation of their own creation in which they held a large part of the stock and to which their time and energy was devoted.

IV. That it was reasonable that the reorganized Remington-Sholes Company should continue to bear the name of the old Company, inasmuch as it was the successor to the old Company, and had advertised the machine under the name Remington-Sholes Typewriter Company, and Remington-Sholes, etc.

First. The reasons assigned in defendant-appellant's answer for the adoption and use of the name "Remington" as the salient feature of the corporate name "Remington-Sholes Typewriter Company," and Remington-Sholes Company," and as a part of the designation of their product, are wholly inadmissible and are, in the main, unsupported by any evidence in the record. Franklin Remington and Carver Remington were the sons of Samuel Remington, who was at one time an officer and a stockholder of E. Remington & Sons corporation, but Samuel never took any personal interest whatever in the manufacture of the so-called "Remington" typewriter, as hitherto shown. *He always assumed a hostile attitude towards the typewriter.* The allegation in defendant-appellant's answer that Franklin Remington and Carver Remington, *during the life-time of their father, acquired a special interest in and knowledge of the manufacture of typewriting machines, and naturally devoted themselves to the business in which their father had become conspicuously proficient*, is, when read in the light of the evidence of complainant-appellee's witnesses, Richardson and Jenne,

absurd, and without a scintilla of evidence in defendant-appellant's testimony to support it.

As already shown, neither Carver Remington nor Franklin Remington ever had anything to do with the typewriter business of E. Remington & Sons, or had any knowledge of, or skill in the manufacture or sale of typewriters of any kind or make, before they bestowed their name on the so-called "Remington-Sholes Typewriter Company" and its product.

There was nothing in the connection or association of the Remingtons with this model machine which furnished any good or sufficient reason why the name thereof should have been changed from **"The Z. G. Sholes"** to "Remington-Sholes." It was the product of Sholes, he having invented and built it before the Remingtons acquired their interest therein, and *naturally* Sholes and the persons theretofore interested in the model named it **"The Z. G. Sholes,"** and called the company, organized to manufacture machines like said model, **"The Z. G. Sholes Company."** These names might have been continued by the Illinois corporations.

It was the expected profits from the use of the name "Remington," which induced Sholes and the Remingtons to change the name of the machine and to organize a corporation under the name and style of "Remington-Sholes Typewriter Company" for the manufacture thereof. If the names of the Remingtons had been *Smith or Peterson* the designation of the machine would not have been changed, and either Sholes' name or some other appellation would have been selected for the new corporations.

As said by Justice Bradley (Celluloid Case, 32 Fed. R., 97), **"it will take a great deal of explanation to convince any man of ordinary business experience that this change of name was not adopted for the purpose of imitating that of the old successful company."**

Second. The first of the reasons, above assigned, namely, that it was *reasonable* that Remington and

Sholes should form a corporation for the manufacture of typewriting machines like or similar to the model, is not sufficiently relevant to the issues in this case to require any extended comment. It is probably true that Messrs. Fay and Head, who furnished the working capital for the enterprise, preferred that the business should be carried on under corporate management, but "no necessity, business or otherwise, required the selection of the name Remington-Sholes for the corporation" which was then created. The public had no knowledge of this name—"Remington-Sholes"—in connection with a typewriter, and the Remingtons were unknown to the public and had no knowledge of or skill in the typewriter business. In the circumstances of this case the use of their names was both unnecessary and improper.

Third. It is asserted that it was *reasonable* to adopt the name Remington-Sholes for the machine, because *both* had labored for many months *in the production of the machine*, Remington furnishing the funds to effect *its reconstruction* and the exploiting thereof. "The Z. G. Sholes" model was *developed and completed before the Remingtons purchased an interest therein*, and it bore the name of the inventor, Sholes.

R., pp. 390–392.

After "The Z. G. Sholes Company" was formed, which was in April, 1893, *machinery was purchased with which to manufacture tools to build the machine.*

R., pp. 400, 401.

It is, therefore, plain that "The Z. G. Sholes" model was then deemed *sufficiently developed and perfected* to serve as a model from which tools could be made for building *commercial* machines like it.

*Moreover*, the *Remingtons* did not acquire any interest in the model until on or *about Aug. 26th, 1893* (R., pp., 402–405, 826), and prior to that time

the model machine *had been produced and owed its existence to Z. G. Sholes and the persons who had theretofore been associated with him.*

After the Remingtons acquired their interests the model machine was for several months exploited with a view to selling and disposing of the same.

R., pp. 404-407, 415, 416.

Subsequently—about Nov., 1893—the *name* of the model was changed and the Remington-Sholes Typewriter Company thereafter organized as heretofore stated.

R., p. 417.

Prior to the organization of the "Remington-Sholes Typewriter Company" some changes were made in the model, but it does not appear that they were of a material character (R., p. 413), and even after the "Remington-Sholes Typewriter Company" was formed and the machine was being prepared for the market the changes from the original model were only in matters of detail.

R., p. 411, 434.

Manifestly there was no "*reconstruction*" of the model machine as alleged by appellants, and aside from the purchase of an interest in the model, etc., the funds furnished by Franklin Remington were mainly expended in exploiting and promoting the machine.

The alleged conferences between Sholes and Remington in regard to changes made in the machine occurred while it was being prepared for the market (R., p. 434). At that time both Remington and Sholes were employees of the so-called "Remington-Sholes Typewriter Company."

Fourth. It is asserted that it was *reasonable* that a corporation created to make the machine should bear the name of both Remington and Sholes, because *the machine it was to manufacture was distinctly*

*the product and owed its existence to both.* We have already shown that *only one machine* existed at the time the Remington Typewriter Company was formed, and that was the model first known as "The Z. G. Sholes," the name of which was changed to "Remington-Sholes," *and that this model was the product of and owed its existence to Sholes and others and not to either of the Remingtons.*

It is also asserted that it is the almost universal custom in the typewriter trade to identify by the same name a corporation and the machine that is to be manufactured. There is no universal custom in the premises. In some cases this is the fact, while in others the names are different. No peculiar custom in this respect prevails in the typewriter trade.

It is further asserted that Sholes' father having invented the pioneer typewriter, which E. Remington & Sons, whereof Franklin Remington's father was at one time President, gave to the world, the public would be interested in the coming together of these sons. Sholes' father was *only one of several inventors of the pioneer typewriter manufactured by E. Remington & Sons*, and which was known as the "Sholes & Glidden" typewriter.

Remington's father never had any interest in any typewriter business separate and apart from that which was carried on by E. Remington & Sons, and in which, as we have seen, he took little or no *personal* interest. Neither of these two Remingtons had any knowledge of the typewriter business, they were unknown to the public, and it is not seen wherein "the public would be interested in the coming together of these sons." The whole typewriter business of E. Remington & Sons and the good will thereof were transferred to appellee's predecessor in 1886, and the same became and now is wholly vested in appellee, and "when the Remington-Sholes Company and its predecessor entered the field, complainant had a world-wide reputation." That reputation had been acquired as the successor to E. Remington & Sons and in the manufacture and sale of the "Remington" typewriter.

It is further asserted that the family name of Remington had a world-wide reputation in many lines of trade, older than and distinct from the good will of the typewriter business. This is undoubtedly true as regards fire arms. But the fact that the name Remington had or has a good or a wide reputation in connection with fire arms and other devices, hitherto manufactured and sold by E. Remington & Sons, furnishes no ground for the use of the name in connection with the manufacture and sale of typewriters. Suffice it to say that the good will and repute of E. Remington & Sons, as respects the typewriter business, were and are the property of appellee.

It is, also, said that the public is attracted by family reputation in trade and that the courts and the public recognize the value of a father's good name and a son's right to avail of it. Conceding for argument's sake that this be so, nevertheless the son's may not appropriate the good will, trade names or trade marks of the old concern with which the father was associated to the damage or injury of the lawful successor.

Finally it is alleged that having a right to use their names like other property, these Remingtons had a right to bestow such names upon a corparation of their own creation in which they held a large part of the stock, and to which all their time and energy was devoted. It is to be noted that the Remington-Sholes Typewriter Company was organized by the two Remingtons and Sholes in conjunction with Head and Fay, the latter of whom was the principal promoter. The corporation was at first organized with a capital of $150,000. Directly after its organization Sholes and the Remingtons transferred one third of their stock—five hundred shares—to Fay and in order to raise funds for working capital $100,000 more was added, making the total capitalization of the company $250,000. This additional stock was taken by Fay and others. After the organization of the company and the in-

crease in the capitalization, as above mentioned, the two Remingtons appear to have held about three-tenths of the stock, but their interests gradually diminished and, on the dissolution of the Remington-Sholes Typewriter Company in November, 1896, Franklin Remington appears to have owned about one-tenth of the stock, while Carver Remington then had comparatively little interest in the corporation. In the new corporation, "Remington-Sholes Company," organized in 1897, Franklin Remington held only one-twentieth part of the stock of the corporation, that is 150 of the three thousand shares, but neither Sholes nor Carver Remington had any interest therein.

The alleged right of the Remingtons to bestow their names upon the corporation Remington-Sholes Typewriter Company, we will presently consider. In respect of the right of the Remington-Sholes Company to continue to bear the name of the old company, and to advertise its machines under the old names, it is to be said that it stands in no better position than its predecessor and that it is in effect but a reorganization of the original concern.

But these alleged reasons for taking the name Remington and using it with the name Sholes are clearly displaced and rebutted by the testimony of Sholes and others, which shows that the name Remington was taken "because that name had been used with another typewriter business (appellee's) and another typewriting machine—namely, the 'Remington' typewriter."

R., p. 426.

The court below, among other things, said: "We have no doubt whatever that the name Remington was chosen because it was expected that it would naturally lead the public to suppose that the new corporation was either the successor or some branch of the old concern, of which appellees' brief observes: the 'name Remington was admittedly a by-word for good workmanship the world over'"

Again the court said: "They knew that the presence of that name on the machine would be a constant temptation, often yielded to by whomsoever sold one to the uninstructed purchaser, to represent that it was the 'real' or 'improved' Remington; that the presence of that name made confusion easy; and that the results of any confusion would be entirely in their favor."

Third. The case at bar is not one in which the manufacturer is using his own personal name in his own business. While the right of an individual to employ his own name in connection with his own business, or with an article of his own production cannot be denied, yet he may not designate his article by his own name in such a way as to cause it to be mistaken for the manufacture or goods of another already on the market under a similar name. Whether it be his name or some other possession, he must so use his own as not to injure the possession or right of another. While an individual has a natural and inherited right to use his own name in his own business, nevertheless the courts have not hesitated in many cases to direct the manner in which a person shall use his own name.

Moreover, this is not a case in which the Remington-Sholes Company and its predecessor were using the name of another person which had become generic. Nor is it one in which the name or names are descriptive of well known classes of goods, as, for example, "Goodyear rubber," which in the case of India Rubber Glove Manufacturing Company *v.* the Goodyear Rubber Company (128 U. S., 598–604), was held to be a term descriptive of well known classes of goods produced by a well known process. In this latter case the words "Goodyear rubber" had lost their *distinctive* character, fallen into common use and become *publici juris*.

Furthermore, the case at bar is not one where the Illinois corporations must, to a certain extent, use the name of the complainant-appellee, and it is not,

therefore, one of *damnum absque injuria*. It is the case of an *unnecessary use* of a name long previously employed by another in the same business, and in which the use thereof by the "second comer" constitutes an untrue and deceptive representation (Fuller *v.* Huff, 104 Fed. Rep., 141, 144, 145; R. W. Rogers Co. *v.* Wm. Rogers Mfg. Co., 70 Fed. Rep., 1017; Clark Thread Co. *v.* Armitage, 74 Fed. Rep., 936, 944; Meyer *v.* Bull Medicine Co., 58 Fed. Rep., 884; Investor Pub. Co. *v.* Dobinson, 72 Fed. Rep., 603).

**Fourth. In this case the defendant-appellants stand in the same posture as if no person who was born into the name of Remington had ever been connected with the "Remington-Sholes Typewriter Company," or the "Remington-Sholes Company," either as an officer or employee, or as a corporator or stockholder.**

In all cases, except where reason and public policy forbid, a corporation is regarded as a legal entity, separate and apart from the natural persons composing it (A. and E. Enc. Law (2nd Ed.), Vol. 7, p. 633; Thomas *v.* Dakin, 22 Wend. (N. Y.), 69-72; People *v.* Watertown, 1 Hill (N. Y.), 616; Niagara Co. *v.* People, 7 Hill (N. Y.), 504; Fietsam *v.* Hay, 122 (Ill.), 293; Dartmouth College *v.* Woodward, 4 Wheat (U. S.), 518-636; Cook on Corporations, Vol. 1, Sec. 1, p. 2, and Sec. 6, pp. 20, 21).

In People *v.* Watertown, *supra*, Judge Bronson said: "The individuals composing these associations (banking) are united in one body and the members lost in the corporate existence. It is not the individual members, but the legal being which acts and transacts business."

A corporation is an artificial person and its name is "an artificial thing," which can be selected by its incorporators from the entire vocabulary of names. A person comes naturally by his name, and may use it honestly in his own business, but he may not

resort to any artifice or do any act calculated to mislead the public and thus produce injury to another beyond that which results from the similarity of name. But a corporation is not endowed with the inalienable rights of a natural person, and does not inherit its name, which is an artificial and impersonal thing chosen by the promoters and organizers thereof.

In respect of corporations which have adopted and are using the name of an older concern engaged in the same business, the rule in such a case is concisely stated in the case of the Bissell Chilled Plow Works *v.* T. M. Bissell Plow Co., 121 Fed. Rep., 357, 367, 368, as follows: "Where the second comer is a corporation that has adopted such name as part of its corporate name, the case has been treated as one where a person not of that name has adopted it as his business name, and marked his goods with it, even though some or all of its incorporators, stockholders or officers may be of that name. For, in such case, it is the corporation and not the individuals connected with it that is doing the business in that name, and marking its goods with it, and, before the adoption of the name by it, it had no such name. Cases of this sort are the cases of William Rogers Mfg. Co. *v.* Rogers & Spurr Mfg. Co. (C. C.), 11 Fed., 495; Le Page Co. *v.* Russia Cement Co., 2 C. C. A., 555; 51 Fed., 941; 17 L. R. A., 354; Meyer *v.* Dr. B. L. Bull Vegetable Medicine Co., 7 C. C. A., 558; 58 Fed., 884; William Rogers Mfg. Co. *v.* R. W. Rogers Co. (C. C.), 66 Fed., 56; Clark Thread Co. *v.* Armitage (C C.), 67 Fed., 896; R.W. Rogers Co. *v.* William Rogers Mfg. Co., 17 C. C. A., 576; 70 Fed., 1017; Investor Publishing Co. *v.* Dobinson (C. C.), 72 Fed., 603; Clark Thread Co. *v.* Armitage, 21 C. C. A., 178; 74 Fed., 936; Fuller *v.* Huff, 43 C. C. A., 453; 104 Fed., 141; 51 L. R. A., 332; Wyckoff *v.* Howe Scale Co. (C. C.), 110 Fed., 520; Lamb Knit Goods Co. *v.* Lamb Glove & Mitten Co., 120 Mich., 159; 78 N. W., 1072; 44 L. R. A., 841; Chas. S. Higgins Co. *v.* Higgins Soap Co., 144 N. Y., 462; 39

N. E., 490; 27 L. R. A., 42; 43 Am. St. Rep., 769; De Long *v.* De Long Hook & Eye Co. (Sup.), 32 N. Y. Supp., 203; Penberthy Injector Co. *v.* Lee, 120 Mich., 174; 78 N. W., 1074; Holmes *v.* Holmes, Booth & Atwood M. Co., 37 Conn., 278; 9 Am. Rep., 324; Meriden B. Co. *v.* Parker, 39 Conn., 450; 12 Am. Rep., 401; Williams *v.* Brook, 50 Conn., 278; 47 Am. Rep., 642.

In the case of Higgins Co. *v.* Higgins Soap Co. (144 N. Y., 462), the New York Court of Appeals, speaking through Chief Judge Andrews, said: "The main ground upon which the plaintiff has been defeated in the courts below is that Charles S. Higgins, or the members of his family, either separately or jointly, had the right to establish the soap business and to use the name of Higgins in conducting it, and to designate the product as 'Higgins Soap,' and that no right of the plaintiff was invaded by giving to the corporation formed by them the name of 'Higgins Soap Company.'" * * * "But the question as to the right of the defendant to assume the name of the 'Higgins Soap Company' or to do business in that name, is not affected by any contract entered into between Charles S. Higgins and the plaintiff. *The defendant is a distinct person in the law from Charles S. Higgins, one of its corporators and officers.* It had entered into no contract with the plaintiff, nor does it derive any of its rights from Charles S. Higgins. *It stands in respect to the question involved in this litigation in the same situation as if Charles S. Higgins had never been a corporator or stockholder.* It cannot appropriate the name, or the trade-marks, or the business of the plaintiff by any simulation or deceit, because the law prohibits such appropriation by any person, natural or artificial." * * * "On the other hand, *we think it equally clear that the defendant derives no additional immunity from the fact that the name of 'Higgins,' in its corporate name, was that of one or more of its corporators, or that Charles S. Higgins,*

*or any one of that name, might engage in the soap business under the family name, or that Charles S. Higgins and the other corporators of the same name had consented to its use.*

The case of DeLong *v.* DeLong in the New York Supreme Court (32 N. Y. Supp., 203) is to the same effect.

In that case Judge O'Brien said: "The right, however, of one to use his own name in his own business is something very different and distinct from the lending or giving of his name to a corporation for the purpose of engaging in a business which has been conducted by others under precisely the same name. A person comes naturally by his name from his parents, and it is a thing personal to himself, which in truth and justice he has the right to use, provided its use is not coupled with any acts or artifices calculated to produce deception or confusion in the public mind between him and some other person to the injury of the latter and the public."

"*The name given to a corporation is an artificial and impersonal thing, which can be selected from an entire vocabulary of names; and the difference between using a name so selected, identical with that under which others do business, and the case of the use by one of his own name in his own business seems to me clear and manifest.* To say that one has the right to select his own name as a designation of a corporation is but another way of stating that he has a right to select any title from among the whole range of names; but it is not equivalent to a statement that he can give his own name to a corporation with a view to making it similar to that employed by other persons in the same business, to their or the public's injury."

The DeLong case was appealed to the General Term of the New York Supreme Court, where the judgment of the court below was affirmed. The learned General Term, following the Higgins case,

held "that a corporation cannot acquire the name of one of its incorporators and use it to deceive the public and to defraud others, who have built up a business under the same name, on the ground that such is the true name of the incorporator."

In the case of Wm. Rogers Mfg. Co. *v.* R. W. Rogers Co. (66 Fed. Rep., 56) the Court said: "Although the use of a personal name as a trademark will not be protected against its use in good faith by a defendant who has the same name, the reason of the rule ceases, and the rule no longer applies, where the defendant, as in the case of a corporation selects its own name; especially where it appears that such name is selected with an intention to mislead."

The Circuit Court of the United States for the Southern District of New York approved the doctrine of the Higgins case in Clark Thread Company *v.* Armitage (67 Fed. Rep., 896, 901, 902). In that case the Court said: "That a party has a right to use his surname honestly is clearly established, but in the case of a corporation there is no such thing as a surname or a Christian name." * * * "The defendant's company is an artificial person; its name is 'The William Clark Company'; it has no Christian name and no surname; its name is not Clark' or 'Clarks'; it began its existence in May, 1891. It is no answer to say that 'Clark' is a part of its name; so are the letters O. N. T. If it were incorporated under the name of 'The Clarkson Company,' the argument would be equally available. The defendant cannot escape the charge of unfair competition by alleging that he is using the corporate name, for he is not. *He is using complainant's trade name, and the fact that complainant's trade name happens to be a part of the name of the corporation which he represents does not give him a right to use it.*" * * * "In the recent case of Higgins Co. *v.* Higgins Soap Company, 144 N. Y., 462; 39 N. E, 490, the leading cases have been collected and the law applicable to this subject is

clearly stated. The facts in that case are very similar to the facts here." * * * "The general principles of law as there enunciated may be considered as furnishing a rule for this case."

The doctrine of the Higgins case was approved by the Supreme Court of Iowa, in Grand Lodge *v.* Graham, 96 Iowa, 592; by the U. S. Circuit Court of Appeals, Seventh Circuit, in the case of Peck Bros. & Co. *v.* Peck Bros. Co., 113 Fed. Rep., 291, 302, and in other cases that are collated in Bissell Chilled Plow Works *v.* T. M. Bissell Plow Co., 121 Fed. R., 357, 367, 368.

In the Court of Appeals of the First Circuit, the principle is concisely stated that the ordinary inherent right of every person to the honest use of his own name in business, provided it be honestly used, is *not applicable to corporations* which have *appropriated surnames* for use in connection with proprietary articles.

> LePage Co. *v.* Russia Cement Co., 51 Fed. Rep., 941, 943.

Other cases in which the unfair use of corporate names has been enjoined are Chickering *v.* Chickering, 120 Fed. Rep., 69; International Silver Co. *v.* Wm. G. Rogers Co., 113 Fed. Rep., 291; S. C. (C. C. A.), 118 Fed. Rep., 133; International Co. *v.* Rogers Co., 110 Fed. Rep., 955; Garrett *v.* Garrett, 78 Fed. Rep., 472.

The legal principle enunciated in the foregoing authorities has recently been recognized and enforced by the British Court of Appeal, in the case of Valentine Meat Juice Company *v.* Valentine Extract Co., Lt., and others, 17 Patent & Trade Mark Cases, 673, 684; S. C., 83 L. T. N. S., 271. In that case, it appeared that the plaintiff was a corporation organized under the laws of the State of Virginia, U. S. A., and that the defendant was formed in Great Britain under the "Companies' Act." The defendant company was organized by one Charles Richard Valentine, *who was managing director and the*

*principal stock holder of the defendant company.* Plaintiff's product was a meat juice sold under some designation of which the name "Valentine" formed a part, as, for example, "Valentine's Meat Juice," "Valentine's Extract," and in some cases it was asked for, sold, or referred to as "Valentine's" simply. Defendant's product was known as "Valentine's Meat Globules," or "Valtine Meat Globules." In referring to the defendant company, Rigby, L. J., observed: "I begin with and mainly go upon the name of the company—the Valentine Extract Company, Limited. I confess I am utterly unable to follow Mr. Upjohn's argument upon that point, that the man was only trying honestly and with proper precautions to make use of his own name. *The Valentine Extract Company, Limited, is not the name of any man; it is an artificial name intended for a purpose*, and when I am told, as the learned Judge found in the Court below, that 'Valentine Extract' was a name for a famous and most valuable meat juice, more properly called, perhaps, 'meat juice' but still known as 'Valentine's Extract,' I cannot doubt the object and intention of this man—at any rate the very clear and necessary intention of a man who cannot be supposed to be ignorant of the effect of what he does. I should say that perhaps ninety-nine out of a hundred people who read that name, the Valentine Extract Company, Limited, would come to this conclusion, that it was a company for the purpose of dealing in 'Valentine's Extract.' 'What is Valentine's Extract?' they would go on to ask. 'Oh, it is a most valuable product, and one that has been for many years of great importance with sick people.' But they say nothing about the possibility of using it as a food; therefore the *prima facie meaning of the name which they chose, was not to refer to 'Valentine,' the individual, but to 'Valentine's Extract,' the product, and by that means to get the advantage of the reputation which had attached itself to the product.* Some attempt was made to

say that really it was 'Extract Company' and 'Valentine' (in a way that I could not understand at all) did not mean 'Valentine's Extract,' but it was the 'Valentine Company,' which is an 'Extract Company. *To me it seems the plainest thing that ever was, that 'Valentine Extract' was deliberately chosen in order to have it believed that the company were the makers of and dealers in 'Valentine's Extract,' and no one was called upon to know anything about the name of an individual at that stage.*"

In the case at bar, it is equally plain that the name, "Remington-Sholes Typewriter Company," and "Remington-Sholes Company" were not the names of *any individuals* but were *artificial* names invented for the purpose of diverting appellees trade to the predecessors of Fay-Sholes Company, as hitherto pointed out. Those names, as well as the name "Remington-Sholes," were deliberately chosen in order to have it believed that said corporations were the makers of and dealers in "Remington" typewriters, or a species thereof, or a new and improved Remington, *and had no reference whatever to Franklin Remington, the individual,* who was wholly unknown in the typewriter trade, and had no independent reputation in the market. The name "Remington" was chosen for Remington-Sholes Typewriter Company and associated with its product in order to derive a substantial benefit from the reputation of "this great name" in the market.

**Fifth. Corporations which do not inherit their names, but assume them voluntarily, may not use their assumed names if such use shall result in the confusion and deception of the public and the displacement of the good will of another's business.**

It was said by Giffard, L. J.: "I quite agree that they (Complainants) have no property right in the name ("Guinea Coal Company"), but the principle

upon which the cases on this subject proceed is, not that there is property in the word, but that it is a fraud on a person who has established a trade and carries it on under a given name, that some other person should *assume* the same name, or the same name *with a slight alteration* (Pall Mall Guinea Coal Company) in such a way as to induce other persons to deal with him in the belief that they are dealing with the person who has given a reputation to the name."

Lee *v.* Haley, L. R., 5 Ch. App., 160, 162.

In the Higgins case (144 N. Y., 468, 469) the New York Court of Appeals said: "The courts interfere in these cases, not on the ground that the State may not affix such corporate names as it may elect to the entities it creates, but to prevent fraud, actual or constructive. *The names of corporations organized under general laws, and in most other cases, are chosen by the promoters, and it would be an easy way to escape from the obligations which are enforced as between individuals, if a corporation were granted immunity by reason of their corporate character.* The principle upon which courts proceed in restraining the simulation of names in the nature of trade-marks, and have come to designate the business of a particular person or company, is stated in Lee *v.* Haley (L. R., 5 Ch. App., 155). * * *

The cases are not infrequent in which the use of corporate names has been restrained on the principle of the trade-mark cases. (Holmes, Booth & Haydens Mfg. Co. *v.* Holmes, Booth & Atwood Mfg. Co., 37 Conn., 278; Massam *v* Thorley Cattle Food Co., L. R. (14 Ch. Div.), 748; Celluloid Mfg. Co. *v.* Cellonite Mfg. Co., 32 Fed. Rep., 94; Newby *v.* Oregon Central Railway Co., 1 Deady, 609; Rogers Mfg. Co. *v.* Rogers & Spurr Mfg. Co., 11 Fed. Rep., 495; The Le Page Co. *v.* The Russia Cement Co., 51 Id., 942)."

The principle, enunciated above, is illustrated and was enforced in cases hitherto cited and particularly in Wm. Rogers Mfg. Co. *v.* R. W. Rogers Co., 66 Fed. Rep., 56; S. C. 70 Fed. Rep., 1017; Garrett et al *v.* T. H. Garrett & Co., 78 Fed. Rep., 472; Stuart *v.* F. G. Stewart Co. et al., 91 Fed. Rep., 243; Meyer *v.* Medicine Co., 58 Fed. Rep., 884; De Long *v.* De Long Co., 89 Hun, 399; S. C. 35 N. Y. Supp., 509; Peck Bros. & Company *v.* Peck Bros. Co., 113 Fed. Rep., 291, and in many other cases.

**Sixth. The fact that the Illinois corporations had a large field from which to select their names, and yet took one similar to that of complainant-appellee is a clear indication of their intention to pirate appellee's good will.**

Celluloid Co. *v.* Cellonite Co., 32 Fed. Rep., 97.

Seventh. Where the name (of defendant) is selected for use because of its similarity to that of plaintiff, fraud is evident.

Taylor *v.* Taylor, 25 L. J. Eq. N. S., 255; Landreth *v.* Landreth, 22 Fed. Rep., 41; Meyer *v.* Bull Medicine Co., 58 Fed. Rep., 884; Peck Bros. & Co. *v.* Peck Bros. Co., 113 Fed. Rep., 291.

**Eighth. The fact that the Illinois corporations used a different name from complainant-appellee's true corporate name, is of no consequence so long as the trade-names of appellee were employed.**

Celluloid Mfg. Co. *v.* Cellonite Mfg. Co., 32 Fed. Rep., 94, 97.

In Le Page Co. *v.* Russia Cement Co. (51 Fed. Rep., 941) the complainant's trade names were "Le Page" and "Le Page's Glues."

In Butterick Publishing Co., Ld., *v.* Standard Fashion Co., reported in the New York Law Journal, March 21, 1896, plaintiff's trade-name consisted of the word "Delineator."

In Gray et al. *v.* Taper-sleeve Pulley Works, 16 Fed. Rep., 436, complainant's trade-name was "Taper-Sleeve Pulley Works."

In Meyer *v.* Bull Medicine Co., 58 Fed. Rep., 884, complainant's trade-name consisted of the words "Bull's Cough Syrup" and "Dr. Bull's Cough Syrup."

In Massam *v.* Thorley's Cattle Food Co., L. R. 14 Ch. Div., 748, the plaintiff's trade-name consisted of the words "Thorley's Food for Cattle."

In Fuller *v.* Huff, 104 Fed. Rep., 141, complainant's trade-name consisted of the words "Health Food Company."

In the Clark Thread Co. *v.* Armitage (67 Fed. Rep., 901) the Court said: "He (defendant) is using complainant's trade-name, and the fact that complainant's trade-name happens to be a part of the name of the corporation which he represents, does not give him a right to use it."

In the courts below counsel for defendant-appellants contended that Franklin Remington in virtue of his being the son of Samuel Remington, and by reason of his relationship to the Remington family, might contribute his patronymic to the Illinois corporations, for their advancement and prosperity, as he had theretofore done. Counsel endeavored to support their contention by postulating an honest, necessary and proper use of the name "Remington" in connection with said corporations and their product—which was and is denied—and by quoting excerpts from decided cases whose facts are unlike and clearly distinguishable from those in the case at bar. In answer to the contention of the learned counsel of defendant-appellants the Circuit Court said:

"That these Remingtons are descendants of one of the original Remingtons, and Sholes a descendant of an inventor of some part of the original typewriters, is set up and relied upon as establish-

ing a right to the use made of the names "Remington-Sholes" in this connection. No right descended, however, in those respects from any of these ancestors to any of these persons; and this excuse has no legal foundation, but is entirely sentimental. They were situated as to this as any other party of the same name would have been, with no standing but their own natural rights to the use of their own name in the transaction of their business. That all persons have respectively the right to use their own names in their own business is entirely clear, but this right is subject to the limitations common to all rights, that it is to be so used as not to injure the rights of others. These Remingtons were not themselves manufacturers of typewriters, and did not start in as nor become such in their own names, nor have their own names put upon machines of their own make; but they gave their name to a large corporation as a distinct entity, which took the name into its typewriter business and put it upon the typewriting machines of that corporation, whereby they undertook to confer the right to the use of that name upon that entity for the benefit of others who had no right to use it at all. This was not a legitimate exercise of the natural right to use their own name in their own business. This was going far beyond their own rights, and was undertaking to give what they did not have, and their own natural rights to the use of their own name in their own business became thereby so mingled with the unlawful use of it for the benefit of others, that it is indistinguishable here. They lost their identity in that of the corporations."

The Court of Appeals said: "The corporation defendant and its predecessor, the typewriter company, acquired their names by the selection of the individuals who organized them. Obviously there was no necessity that either of them should take the name "Remington" either alone or in combination. The junior Remingtons contributed money to the enterprise and gave, at

least one of them did, time and services to its promotion, but they were very far from being the entire corporation; the corporation was a separate entity from them; they chose not to prosecute the typewriter business themselves; had they done so good faith toward those dealing with them might make it necessary to use their own name; they chose on the contrary to associate themselves with others in a corporation whose name its organizers were free to select."

In this connection it is to be borne in mind that Samuel Remington, the father of Franklin Remington and Carver Remington, and his brothers had long prior to the sale of the typewriter business to Wyckoff, Seamans & Benedict in 1886, vested all their right to the use of the name "Remington" in connection with the manufacture and sale of fire arms, typewriting machines, etc., in the corporation of E. Remington & Sons, of which they were stockholders. *The typewriter enterprise was initiated and always carried on by E. Remington & Sons corporation and not by any of the Remingtons individually.* The proofs herein show that Samuel Remington died about December, 1882, and that in September, 1883, the administrators of his estate transferred to Philo Remington, one of the brothers, all of Samuel's interest in the corporation, E. Remington & Sons, consisting, mainly, of shares of stock which he had owned in the capital stock of that corporation. Subsequently and in 1886, the whole typewriter branch of the business of E. Remington & Sons, including the trade-names, trade-marks and the good will thereof, was conveyed to appellee's predecessors. Inasmuch as all the right and title of Samuel Remington and of his brothers to the use of the name "Remington" in connection with typewriting machines were vested in E. Remington & Sons corporation, and subsequently passed to its successors and to the complainant-appellee herein, it is not seen that any right to use the name "Rem-

ington" in connection with typewriting machines was reserved to, or descended, or vested in Franklin Remington and Carver Remington, heirs and next of kin of Samuel Remington, or that by reason thereof they could, as against appellee, resume the use of that name in connection with typewriting machines any more than they could take possession of any other property originally owned by the corporation, E. Remington & Sons. In other words Franklin Remington and Carver Remington at the time of the organization of the Illinois corporations, stood in respect of the use of their patronymic in the same position as if they were not related to Samuel Remington, deceased, or to those members of the Remington family who were stockholders and directors of E. Remington & Sons corporation.

In the brief and argument of counsel for appellants, in the court below, much stress was laid by them on the value of "family reputation," "pride of ancestry," and the right of every individual to avail of the full benefits and advantages to be derived from a good name established by the labor and integrity of an ancestor, etc., and in that connection an excerpt was quoted from the opinion of the N. Y. Supreme Court at general term, in the case of Meneely *v.* Meneely, 1 Hun, 367. While the remarks quoted were doubtless in the circumstances of that case proper, they were nevertheless *obiter dicta*, as will be clearly manifest by reference to the opinion in the case and to that of the New York Court of Appeals, 62 N. Y., 427. The facts in the Meneely case were essentially different from those in the case at bar. Andrew Meneely, the father of the plaintiffs and of the defendant Meneely, had for many years carried on the business of bell founding at Troy, New York, and possessed personal skill and reputation therein.

The plaintiffs, who were sons of Andrew Meneely, continued to carry on the old business at Troy, N. Y., and another son with one Kimberly commenced

manufacturing bells in a different city and county on the opposite side of the Hudson River, under the firm name of "Meneely & Kimberly." The Court found that the defendant Meneely had not resorted to any artifice, or been guilty of any fraud or deceit, or done any act calculated to mislead the public as to the identity of the establishments, and further held that the injunction awarded by the Referee was too broad in scope, in that the defendant Meneely was absolutely prohibited from using his own name in his own business in any way. The case was one between members of the same family, none of whom possessed any exclusive rights as against the others, in respect to the right of each to enjoy the fruits of their father's personal reputation in connection with the business of bell founding, which was the *only* business that the father had carried on in his life time, and the only one "the son (defendant) had been instructed to follow." The Court thought it would be *unjust* to deprive the defendant of the right to use his own name in his own business in the circumstances of that case, and the remarks of the Court at General Term, quoted by appellants' counsel in the Court below, were made in discussing that point.

This Meneely case is referred to, in the opinion of the New York Court of Appeals, in the Higgins case, *supra*, as an authority upon the proposition that any person may use in his business his family name, *provided he uses it honestly and without artifice or deception*, although the business he carries on is the same as the business of another person of the same name previously established.

Manifestly the New York Court of Appeals, in the Higgins case, found nothing in the Meneely case, which conflicted with the proposition "that the defendant derives no additional immunity from the fact that the name of 'Higgins' in the corporate name was that of one or more of its corporators, or that Charles S. Higgins or any one of that name,

might engage in the soap business under the family name, or that Charles S. Higgins and the other corporators of the same name had consented to its use."

## COMPLAINANT'S RIGHTS ARE EXCLUSIVE AS AGAINST DEFENDANTS-APPELLANTS.

That another may have the right to use a particular name, as well as complainant-appellee is unimportant, if appellee's right be exclusive as against appellants.

Newman *v.* Alvord, 51 N. Y., 189, 195.
Wm. Rogers Mfg. Co. *v.* Rogers & Spurr Mfg. Co., 11 Fed. Rep., 495.
Croft *v.* Day, 9 Beav., 88.
Clark Thread Co. *v.* Armitage, 67 Fed. Rep., 896, 904.
S. C. App., 74 Fed. Rep., 936, 943.

In Newman *v.* Alvord, *supra*, the New York Court of Appeals speaking through Judge Earl, p. 195, said: "It is sometimes said, in the cases to which our attention has been called, that the claimant of a trade-mark must have the exclusive right to it. This form of expression, I apprehend, is not strictly accurate. *The right must be exclusive as against the defendant. It is generally sufficient, in such cases, if the plaintiff has the right and the defendant has not the right to use it.* The principle upon which the relief is granted is that the defendant shall not be permitted, by the adoption of a trade-mark which is untrue and deceptive, to sell his own goods as the goods of the plaintiff, thus injuring the plaintiff and defrauding the public. Here the plaintiffs had given a reputation to Akron cement in the market. They had always been its principal manufacturers and sellers, and at the time of the commencement of the suit, the sole parties who could be injured by the fraudulent use

of the trade-mark by the defendants, and, hence, they are clearly entitled to the protection which they seek."

In Croft *v.* Day, *supra*, Lord Langdale, M. R., said: "My decision does not depend upon any peculiar or exclusive right the plaintiffs have to use the names of Day & Martin, but upon the fact of the defendant using those names in connection with certain circumstances, and in a manner calculated to mislead the public."

## MEASURE OF RIGHT TO USE A NAME.

While a person may not in general be deprived of his right to use his own name, the name must be *as his own name* and not as *the name of his goods*, when the latter use would tend to displace the good will of another whose goods were known by the same or a similar name. In the Duryea case (101 Fed. Rep., 117) the court said that a second comer by the name of Duryea could not put his product on the market under the name of "Duryea's starch."

## RIGHT TO A NAME NEED NOT BE EXCLUSIVE.

The rule is well stated and cases cited in Shaver *v.* Heller & Merz Co., 108 Fed. Rep., 821, 825, 826. The Circuit Court of Appeals of the 8th Circuit, speaking by Judge Sanborn, said: "Another proposition of counsel for the appellant is that the appellee has, and can have, no proprietary interest in the word 'American' or in its exclusive use; and therefore it is entitled to no injunction to restrain its use by another. But an ownership and an interest in the means by which a fraud or wrong is about to be committed are not essential to the maintenance of a suit to enjoin its perpetration. A title to the property about to be injured is sufficient. One gathers the seeds of pernicious weeds, and threatens

to sow them on the field of his neighbor. The latter has no proprietary interest in the seeds, but he owns the field, and the crop it is producing, and these facts are sufficient to warrant any Court in granting summary relief by injunction against the threatened injury. The appellants scatter throughout the land, for the purpose of deceiving the public and diverting to themselves the trade, custom, and good will of the appellee, words and names which convey the false statements that the goods they are selling were made by the Heller & Merz Co. That company has no property in the words or in the means by which this fraud is committed, but it owns the good will—the custom—which the false and fraudulent use of these words and names injures and destroys; and its proprietary interest in this good will is ample to warrant the Court in enjoining its destruction by the fraud. * * * It is sufficient that the complainant is entitled to the custom—the good will—of a business, and that this good will is injured or is about to be injured by the palming off of the goods of another as his. * * * This is not a suit for the infringement of a trade-mark. It is a suit for unfair competition for selling goods of the appellee as those of another. For this reason no proprietary interest in the word 'American,' or in the names whose use is enjoined was essential to the issue of the injunction."

**It is not material in this case whether the name "Remington" is or is not a lawful technical trade-mark, for the right of the appellee to the use of this name is so far exclusive as against the appellants that the Court will treat the name as a descriptive term to the benefit of which appellee is entitled.**

Garrett *v.* Garrett Co., 78 Fed. Rep., 472; De Long *v.* De Long Hook & Eye Co., 32 N.Y. Supp., 203, 204; Clark Thread Co. *v.* Armitage, 67 Fed. Rep., 896; S. C., 74 Fed. Rep., 936; Koehler *v.* San-

ders, 122 N. Y., 65, 74; Montgomery *v.* Thomson (1891) App. Cas., 217; Wotherspoon *v.* Currie, 5 L. R. H. L., 508; Reddaway *v.* Banham (1896) App. Cas., 199; Valentine Meat Juice Co. *v.* Valentine Extract Co., 83 L. T. N. S., 271.

## CONFUSION IN BUSINESS AND DECEPTION OF THE PUBLIC.

**The use by the Howe Scale Co. and the Remington-Sholes Company of the names "Remington," "Remington * * * Company," etc., was calculated to produce and cause confusion in the mind of the public and in the business of appellee, and the public and purchasers and users of writing machines were mislead, and caused to believe that the typewriters manufactured by the Remington-Sholes Company, and sold by defendant-appellant were of appellee's manufacture, and were "Remington machines," or a species thereof, or a new and improved "Remington," and that the Remington-Sholes Company's business and its machines had some connection with the complainant-appellee.**

I. The Howe Scale Company and its principal, the Remington-Sholes Company, admitted that there was confusion in the minds of the public as regards the connection of the Remington-Sholes Company with the "Remington" typewriter. In other words, it was a conceded fact in this case that the defendant-appellant and the Remington-Sholes Company had used and were using, in their business and upon their machines, a name which led, or was likely to lead, the public to believe that the Remington-Sholes Company was *connected* with the appellee and manufactured the Remington typewriter.

For example, in Complainant's Exhibits, "Remington-Sholes Company's catalogue, Sept. 16, 1898," (p. 22), "Rem-Sho catalogue" (p. 21), "Rem-Sho booklet" (p. 24), "Remington-Sholes-McGurrin catalogue" (p. 24), being catalogues from time to time issued by the "Remington-Sholes Company," and circulated by the defendant-appellant, it is said: "The question is *often* asked, 'What *connection* has the Remington-Sholes Company with the Remington Standard Typewriter?' And again they say, 'We are sometimes asked about the right of the Messrs. Remington and Sholes to the use of their own names in connection with typewriters?'" * * *

In the **Phonographic World** of June, 1897, which is published in the City of New York, and is circulated extensively throughout the United States, and to some extent in foreign countries, an article appears under the signature of Franklin Remington, the alleged manager of the Remington-Sholes Company, describing the structure and mode of operation of the so-called Remington-Sholes or Rem-Sho No. 2 Typewriter. This article will be found on pp. 392, 393 and 394 of said publication. It was prepared by Franklin Remington, and published by him on behalf of the Remington-Sholes Company and the defendant-appellant in this case (R., p. 228). An advertisement of the defendant-appellant also appears on the back cover of this publication. In Mr. Remington's article (p. 394), he says: "Though we have been making typewriters for the past three years, *we are still asked at times what connection has the Remington-Sholes Company with the Remington Standard Typewriter.*"

Defendant-appellants' witness, **Romig,** testified on cross-examination as follows: "*I recall on several occasions people coming into the office to look at typewriters asking me, 'Is this the Remington machine?'* To which I always replied that it was not, and endeavored to explain to them just what this machine was, namely, the invention of a machine of one of the original descendants of the

older Sholes, *inventor of the Remington typewriter*. In other words, a *second generation* of typewriter inventors and manufacturers, *in the later case bringing in Mr. Franklin Remington as manager of the Remington-Sholes Company.*

R., p. 1135.

At another place in his testimony Romig stated: "At the time I was engaged as stenographer and salesman in the office of the Howe-Scale Company. Mr. Frank Remington gave us a brief history of the manufacture of the machine, stating that Zalmon G. Sholes, a descendant of the original Sholes, *who invented the "Remington Standard" machine* (which was an untrue statement), had invented the "Rem-Sho" machine; and that he, Mr. Franklin Remington, was also a descendant of the original Remington connected with the old Remington Standard Typewriter. *He told us not to confuse the name Remington in the sale of the Rem-Sho machine or lead people to think that we were selling the Remington machine.*

R., pp. 1139, 1140.

**George A. Baldwin,** who had been the general organizer of the typewriter business of the Remington-Sholes Company since Jan. 1st, 1898 (R., p. 1004), testified that he had been approached by salesmen and dealers relative to the use of the name Remington-Sholes by defendant-appellant's company, and had explained to them the origin of the name, etc. (R., p. 1043).

In his direct testimony he says: "I told Mr. Scorer (then a salesman for appellant) to sell the machine strictly upon its merits; that the machine was good enough to sell, and *that we did not want any misrepresentations or deception in any manner.*"

R., p. 1017.

Baldwin states that Mr. Fay called his attention to that portion of the catalogue under the heading "In regard to our name."

R., pp. 1006, 1041.

He said "The question was brought up for the reason that it was sometimes asked who Mr. Remington and Mr. Sholes were, and of course I wanted to be informed on the matter. (R., p. 1041). This question was asked by salesmen and prospective buyers he thought from *natural* curiosity. (R., 1042).

In cross-examination he further testied as follows:

xQ. 193. Do you mean to say you have no idea why they asked the question, and you wish the Court to understand that you do not know?

A. *I think it would be a natural inquiry, owing to the similarity of names of another machine,* especially among people who are familiar with typewriters and their makers.

xQ. 194. *What other machine do you refer to in your last answer?* A. *The machine manufactured by Wyckoff, Seamans & Benedict, the Remington typewriter.*

xQ. 195. *Then it was because there was a machine upon the market known as the Remington typewriter that the inquiry was made of you about the use of the name "Remington" in connection with the "Remington-Sholes" or "Rem-Sho" typewriter, and the Remington-Sholes Company; is that correct?* A. *Yes, sir; that is true, I think.*

xQ. 196. *How frequently was that inquiry made of you by prospective purchasers or dealers or agents?* A. *I am unable to state that; it was made now and then, not always.*

xQ. 197. *But frequently?* A. *Well, yes; now and then.*

R., p. 1043.

**V. E. Williams,** another of the appellant's witnesses, testified:

"I remember distinctly interrogating Mr. Scorer (appellant's agent) respecting the meaning or signification of the name 'Rem-Sho,' *and of insinuating that it would be likely to deceive the unwary, after his explanation that 'Rem' stood for Remington.*"

R., p. 1225.

Another of appellant's witnesses, **Hamlin E. Hatch,** testified that *he had been asked by dealers and by prospective buyers of typewriters whether the Rem-Sho machine or Remington-Sholes Company had any connection with the so-called "Remington typewriter."*

R., pp. 1061, 1062.

**W. De Saussure Trenholm,** who was in charge of the typewriter department in the office of the Howe Scale Company, or Page, Dennis & Co., 341 Broadway, New York City, says (R., pp. 1250, 1252), "When the office was opened at 341 Broadway *Mr. Franklin Remington* came here from Chicago, and in a conversation with me explained how the Remington-Sholes typewriter got its name, *and gave me to understand that that explanation should be made in response to any inquiries on the subject.*" * * *

In cross-examination reference was made to his answer to direct question 23, above quoted, and he was requested to state all that Mr. Remington said on that subject at the time of said interview. He answered as follows: "As well as I remember it *Mr. Remington said that Mr. Sholes had invented the machine* and brought it to him with the idea of manufacturing it; that they proceeded to make the machine, and that Mr. Fay took some interest in the undertaking, and at his suggestion the machine was called the 'Rem-Sho;' *as a compound abbreviation of the two names; that he and Mr. Sholes were the sons of the two men who had in-*

*vented and started the manufacture of the Remington Standard typewriter, but that their interests were entirely disconnected, and that this should be told in response to any inquiries as to the origin of the name Rem-Sho.* This is as near as I can recall the conversation."

R., pp. 1257, 1258.

In xQ. 66 (p. 1262), the witness was requested to state *the names of salesmen and the instructions which he gave them on the subject of taking care to distinguish between the two machines*, and after naming the salesmen, he said: "To all these I explained the origin of the name Rem-Sho *and told them that this explanation was to be given in response to any inquiries as to where the name came from.* They were not directed further than this, except that *it was understood that they were to avoid confusing our machine with the Remington Standard, where it appeared that such confusion seemed likely.*"

He further testified that in his explanation to his salesmen he stated to them that "It (Remington-Sholes machine) was invented *by the son of the man who invented the Remington Standard Typewriter, and is being manufactured by the son of the man who started the manufacture of the Remington Standard Machine.*"

R., p. 1263.

Being asked as to what instructions he gave the salesmen in respect to taking care to distinguish between the two machines, he answered: "Nothing more than that the machines were entirely different, so far as business connections were concerned, and that in using the name Remington in their explanation of the machine and its merits that *he was the son of the original Remington typewriter man,* * * * and that the business interests of the two machines were separate and apart."

R., p. 1263.

Trenholm's description of Mr. Remington's explanation to a *prospective* customer is illuminative in this connection.

R., p. 1266.

In answer to xQ. 80 (1266) the witness testified: "Upon Mr. Remington's arrival here, he and I went out together to sell a machine, and I listened to his statements concerning it to the *prospective customer, and when the customer inquired what relation existed between our machine and the Remington Standard, Mr. Remington explained what I have heretofore stated about the relationship of the two typewriters, and on leaving this office he told me that this explanation should be given in response to such inquiries.*"

In answer to xQ. 87 (p. 1268), as to whether or no inquiries had been made of him while manager of the typewriter department at 341 Broadway, concerning the *connection* between the Rem-Sho machine, so called, and the Remington Standard Typewriter by *prospective* customers or other persons, he said: "*I think that question was asked me at different times*, but I do not now recall any particular instance at which it was made or any particular person who made it."

In answer to RDQ. 109 (pp. 1272, 1273), the same witness said: "*I remember very distinctly that on one occasion a man came up to the typewriter department and asked me whether that was the Remington Standard Typewriter* which I had there (indicating one of the Remington-Sholes machines which was on a table nearby). *I told him no, that it was the Remington-Sholes Typewriter; that the Remington Standard Typewriter office was on the block below; whereupon he left the office and did not return, although I offered to show him one of the machines I had for sale.*"

**This inquiry was made by a prospective purchaser, who had been decoyed into the store of the defendant, which was located on the same**

**street, a short distance above the New York office of the complainant-appellee, being attracted thither, no doubt, by the words "Remington-Sholes Typewriters," which were painted on the front show windows of defendant-appellant's store.**

R., p. 1256.

**Thomas O. Parker** was employed as a salesman in the office of the Howe Scale Company, 341 Broadway, New York City, from the 1st of January, 1898, until some time in September of the same year.

R., pp. 1274, 1275.

Being interrogated as to whether or no he had received any instructions from the defendant-appellant or its company, in regard to any explanation which should be made in answer to inquiries respecting the name of the "Rem-Sho" machine, or the "Remington-Sholes Company," he answered: "Only in this regard, *that we were instructed in case inquiries were made regarding any possible connection with the Remington Company that we were to say that there was no connection whatever between the two companies.*"

R., p. 1278.

It appears from Parker's testimony that **Mr. Weingart** visited the store of Page, Dennis & Co.—the appellant's sales office—*for the purpose of purchasing a Remington typewriter.*

R., pp. 1282, 1287, 1288, 1295.

In his direct examination he was asked whether or not he told Mr. Weingart where or by whom the Remington Standard Machine was being sold, and he answered: "I do not recall that, *but I know I told lots of people who came there inquiring about the Remington machine and where it was sold and just where their office was.*"

R., p. 1283.

Referring to the instructions given to him by Franklin Remington and Trenholm, in regard to distinguishing the Remington-Sholes machine from the Remington machine, Parker said: "*I never sold a machine nor did I ever place one on trial with any one without explaining the difference between the Rem-Sho machine and the Remington Standard.* I mean by this that I explained to them that the machines were entirely different in every way, both as to construction and manufacture, *that they were made by different companies. I do not think I ever sold a machine to a party to whom I did not state that the manager of our company, Mr. Franklin Remington, was the son of the man who first manufactured the old Remington machine, and that our Mr. Sholes was the son of the inventor of the old Remington machine, and add that they were entirely different companies, and I would usually wind up in a joking way by saying: 'You see it is a case of father against son.'*"

R., pp. 1286, 1287.

In cross-examination he was interrogated as follows:

xQ. 64 "Did you always volunteer this information or was it given in answer to or explanation of inquiries made by the purchasers or prospective purchaser? A. Sometimes I volunteered it and sometimes it came out in the course of conversation. *I always was particular about the point of it not being a Remington machine, and when I did not volunteer the information, the question naturally was asked me then about the manufacture of the machine.*"

R., p. 1288.

A little further on in his deposition **Parker** was interrogated as follows:

xQ. 67 "And when you did not succed in your endeavors to sell Rem-Sho machines to inquirers

for the Remington machine you sent them down to the Remington store or told them where they could buy a Remington make? A. *I don't think I said that I sent all parties who inquired about Remington machines to the Remington office.* I think I said parties who inquired for the *Remington office.* Whenever it was asked me where a Remington could be bought I gave the desired information, that is, I told them where the Remington office was located.

xQ. 68. But as you before stated you tried to sell such parties a Rem-Sho machine; is that right? A. *Yes, I tried to* sell anybody who came in a Rem-Sho machine.

R., p. 1288.

In cross-examination Parker, being asked whether *Franklin Remington told him never to allow a customer to think that the Remington-Sholes Company was in any way connected with the Smith Premier Company or any other typewriter company than the Remington Company, answered no.* Franklin Remington's admonitions were confined entirely to the so-called Remington Company, that is to say, the concern which manufactured the widely known Remington, or Remington Standard typewriter.

R., pp. 1297, 1298.

**Frank L. Sholes,** who was in the service of the defendant-appellant's company from January, 1895, until March, 1900, in answer to the inquiry whether or no he had received any instructions in regard to the sale of Rem-Sho typewriters, he said: "*I had always been told not to confound the name Remington-Sholes with that of the Remington Standard.*"

R., pp. 1160, 1169, 1170.

**Joshua T. Gillelan** testified that he was employed in selling the Remington-Sholes typewriter in Baltimore, Md., from about March, 1898, until January 1st, 1899.

R., pp. 1325, 1326.

He said, among other things: "I was told by Mr. H. I. Seddon, who was at that time manager of the typewriter department for the Howe Scale Company, that the Rem-Sho was in no way connected with the Remington Typewriter Company, *and that I should explain to people that it was not, in order to avoid any confusion that might arise.*"

R., p. 1331.

This witness testified that *people occasionally inquired as to the connection of the Remington-Sholes Company with the so-called Remington Company.*

R., pp. 1334, 1335.

Mr. Seddon did not say to the witness that he was to explain to people or prospective purchasers of typewriting machines that the so-called Rem-Sho typewriter was in any way connected with the *Smith-Premier* or the *Barlock* typewriter, or any other typewriter company, in which the name "*Remington*" was not associated.

R., p. 1336.

**Walter M. Wilgus**, a salesman of the appellant's company, testified: "*It has been asked by a number of parties, 'Have you any connection with the Remington Company?'* and I would then explain that we had no connection whatever with the Remington Standard typewriter, and invariably referred them to that part of our catalogue, which is marked 'In regard to our name.'"

R., p. 1350.

In cross-examination, Wilgus was interrogated, and answered as follows:

xQ. 87. "And it is your judgment, is it, *that the association of the name Remington with the so-called Rem-Sho machine has been of advantage to the Remington-Sholes Company or its agents in the sale of their machine? A. In some cases it has, while in other cases some people have hesitated on that account.*

xQ. 88. *Why did they hesitate on that account?* A. *On account of the name Remington they would often want to be assured that they were in no danger of any liability from using this new machine Rem-Sho.*

xQ. 89. *They hesitated, were reluctant to take it on account of the use of the name Remington; is that what you mean?* A. *Yes, sir.*

R., p. 1349.

Wilgus also testified that *while he was in the office of the Howe Scale Company in Philadelphia inquiries were made whether or no that was the Remington office or the place where the Remington machine was sold.*

R., p. 1349.

**Now from the appellants' catalogues and publications and from the mouths of their own witnesses, it appears:**

1. That *the public believed* and was under the impression *that there was some sort of business connection, or relationship, existing between the Remington-Sholes Company and the appellee's machine, known as the "Remington" typewriter.* In other words, that appellant's company was making and selling a Remington typewriter or a species thereof, or a new and improved Remington.

2. People frequently came to appellant's offices to examine machines *and inquired if appellants sold the Remington typewriter.*

3. Appellants cautioned their salesmen not to *confuse* the name "Remington" in the sale of defendant's machine, or lead people to think it was a Remington typewriter. This shows a liability to confusion in business.

4. *They cautioned their agents and dealers against making any misrepresentations or practicing deception.* The reason is manifest.

5. That the inquiry was a *natural* one, owing to the *similarity of names* between appellee's business and machine, and that of appellant's principal.

6. This inquiry was *frequently* made by *prospective purchasers* of typewriters, and by dealers and agents of defendant-appellant and its principal.

7. The suggestion was made to appellant's agent, that the use of the name "Rem" or "Remington" was likely to deceive the "*unwary*" purchaser of writing machines.

8. Appellants say that their salesmen were *cautioned to be careful* not to allow any one to get an *erroneous* impression as to the origin of the Rem-Sho machine, and the *status* of the two concerns.

9. *The appellant displayed the words "Remington-Sholes Typewriters" upon the windows of its sales office, which was a short distance above the store of appellee, located upon the same street, and prospective purchasers came into appellant's store for the purpose of purchasing Remington typewriters.*

10. *Lots of people called at appellant's store at No. 341 Broadway, New York City, making inquiries about the "Remington" machine.*

11. Appellants say that they always explained that the machines were made by different concerns, *but always endeavored to sell "Remington-Sholes" machines to the persons making the inquiries*, who were doubtless *decoyed* into defendant-appellants' store by the name "Remington" which was displayed upon the signs.

12. Appellants' agents were instructed to make the explanation *in order to avoid any confusion that might arise.*

13. *People hesitated about purchasing the Remington-Sholes machine, because the name Reming-*

*ton was used in connection therewith, and purchasers were afraid of being liable for infringement.*

14. In all explanations given by the appellants' agents, *the name* "*Remington*," in connection with Mr. Franklin Remington, was put forward as an important factor, and used to aid in selling the so-called Rem-Sho typewriter.

15. Appellants' witnesses also represent that *Mr. Franklin Remington*, in giving them a history of the manufacture of the Remington-Sholes machine, and which history they were instructed to impart to the purchasing public, *stated that Mr. Sholes' father invented the "Remington-Standard machine," and that he (Remington) was the son of the man who first manufactured it.* As was said by Collins, *J.*, in the Valentine Meat Juice Company case, this statement *was* untrue.

**The fact that the defendant-appellants and the Remington-Sholes Company, and their officers, cautioned their salesmen, dealers and agents not to permit deception is evidence against them as showing that they doubted the propriety of the use of the name "Remington," and that they believed such use was likely to create confusion and mislead intending purchasers.**

In Glenny *v.* Smith, 2 Drew & Sm., 476; S. C., 11 Jurist. N. S., 964, it was held that the fact that the defendant had cautioned a shopman not to permit deception, was evidence against the defendant, as showing that he doubted the propriety of his use of the name which he employed in his business.

Had appellants not used *a name so similar to that of the appellee, as to be calculated to create confusion in business and to mislead and deceive the public, there would have been no necessity whatever for cautioning their salesmen, agents and dealers, or purchasers of typewriters, that the Remington-Sholes Company had no connection with*

*the Remington or Remington Standard typewriter.*

Their own acts, admissions and publications are persuasive evidence that their use of the name Remington was calculated to confuse their business and machine with that of appellee's; *but they hoped by cautioning their agents, dealers, etc., to escape liability for infringement.*

If the names used by the appellants were so unlike those of the appellee that confusion and deception were not likely to occur, why this constant warning of their agents and the public that their writing machine was not of appellee's manufacture, and that the Remington-Sholes Company had no connection with the Remington typewriter, or Remington Standard typewriter.

In Pillsbury *v.* Pillsbury-Washburn Flour Mills Co., 64 Fed. Rep., 841, 848, 849, the Court said: "It may be remarked, in passing, that if these brands are so dissimilar that the 'most casual observer' cannot be imposed upon, why assure purchasers, wholesale and retail dealers, who are expected to be, and are naturally, more careful than a purchaser of a single package, that the goods were not the product of the Pillsbury Mills." To same effect are Walter Baker & Co. *v.* Baker, 77 Fed. Rep., 181, 186, 187; Chappell *v.* Davidson, 2 Kay and J., 123; S. C., 8th De G., M. & G., 1.

Appellants' counsel in the court below said that: "While the appearance of the name 'Remington' in the *corporate* name of the Remington-Sholes Company may tempt the curiosity of some persons to inquire as to the existence of a *connection* between such company and complainant, the use of the name 'Sholes' in such corporate name is a distinction so prominent that no reasonable person can fail to recognize it, and if vested with common intelligence to understand its significance."

And again counsel said: "When the Remington-Sholes Company and its predecessor entered the field the complainant had a world-wide reputation.

It was but natural, therefore, that salesmen of the Remington-Sholes Company and its predecessor should be *often asked if any connection* existed between such companies and complainant. However strenuously it may be argued that the asking of such questions indicates confusion in the mind of the public, we submit that it warrants no such inference. On the contrary the inquiry '*If* there is any connection' indicates a recognition in the mind of the inquirer of the existence of complainant as distinguished from the company concerning which such question is asked. The pertinent fact is not whether the public wondered as to the existence of any *connection* between the complainant and the Remington-Sholes Company, but whether it regarded these companies as *identical.*"

And once again counsel said: "*It may be contended that the very fact of the statements made by the Remington-Sholes Company and its predecessor in catalogues, signs, etc., to the effect that no connection existed with complainant, would indicate that there was danger of confusion arising,* but the plain answer to this is that these statements were made after the threat of complainant contained in its notice of June 16, 1894, and repeated at later dates:

In answer to these several contentions appellee says:

1. If the name "Sholes" used in the corporate names and on their product in connection with the name "Remington" clearly and adequately differentiated their machines from appellee and its product and would prevent persons of common understanding and intelligence from being misled or deceived, why did the Howe Scale Co. and the Remington-Sholes Company assure their agents and dealers and purchasers of their product that the Remington-Sholes Co. had no connection with the "Remington Standard Typewriter"?

These cautionary notices clearly show that the

names used by them *were known to be calculated to confuse and mislead the public*, and hence they were given. The contention of appellants' counsel that these notices to the public were given only in consequence of appellee's letter of June 16, 1894, forbidding the use of the name "Remington" is inadmissible without force in view of the fact that the notices show on their faces that they were issued because "*the question is* (*was*) *often asked* (*by the public*), '*What connection has the Remington-Sholes Company with the Remington Standard Typewriter?* [Italics not in original.] Manifestly it was because the public had asked the question that these notices were given, *and not because of appellee's letter*, as asserted by appellant's counsel. Counsel's attempted explanation is clearly an afterthought.

2. In respect to counsel's contention that the inquiry was "If any connection existed between such companies and complainant," the fact is to be noted that there was no "*if*" in the inquiry made of salesmen, as will readily appear by reference to the Record, pp. 886, 1434. Hence the argument of counsel in respect to the significance of the word "*if*" is not of force.

3. It is a *pertinent* fact in this case whether the public was or might be led to believe, in consequence of appellants' use of the name "Remington," that there was a *connection* between the Illinois corporations and appellee and their products. The courts below evidently thought so and it is respectfully submitted that their holdings in that respect was right. The rule is well settled that if the name taken is so identified with the plaintiff that the defendant's use of it will induce the belief that his goods are those of the plaintiff, or *that his business is an extension of, or an amalgamation with, or is otherwise connected with the plaintiff's business* and will thereby cause substantial damage, an injunction will be granted. Kerly on Trade-marks (2d

Ed.), 476. Randall *v.* British and American Shoe Co., 19 Rep. Pat. Laws (British) 393. Eastman Photographic M. Co., Ld. *v.* John Griffiths Cycle Corporation, Ld., *et al.* 15 R. P. Cas., 105, 112.

In the case last cited the court said: "I therefore grant an injunction to restrain the defendant's companies or either of them, from carrying on business under the name 'Kodak Cycle Co., Ld.' or under any name comprising the word 'Kodak' likely to mislead or deceive the public into the belief that the defendant company is the same company as *or is connected with either of the plaintiff companies*, or that the business of the said companies or either of them, is the same as, *or is in any way connected with, the business of the plaintiffs*, the Eastman Photographic Material Co., Ld."

4. Inasmuch as appellee's machine had "*a world-wide reputation*" *as the* "*Remington*," when the "Remington-Sholes Company" and its predecessor entered the typewriter field it was perfectly natural for the public to believe that machines made and sold by them were of appellee's manufacture and that the business of "Remington-Sholes Co." was a branch or an *extension of*, or an *amalgamation with* appellants, or was *connected, in some way, with appellee's business*. The name "Remington-Sholes" was well calculated to induce the belief that the *new* company was an *amalgamation* comprising the business of the *old* one. Manchester Brewery Co. Ld. *v.* North Cheshire & Manchester Brewery Co., Ld., 1 Ch., 536 (1899), App. Cas., 83.

Moreover it is perfectly plain that the Howe Scale Co. and the Remington-Sholes Company could not escape liabillity by instructing their salesmen, agents and dealers to inform customers of the true state of facts, *since their statements would not pass on to subsequent or ultimate purchasers, nor is there any assurance that the salesmen, agents or dealers would inform customers thereof.*

Clearly appellants' acts and statements were evidence of probability of deception.

**2d. There is abundant evidence in the record besides that furnished by defendant-appellants' publications and witnesses showing confusion in the minds of the public as to the origin of the Remington-Sholes or Rem-Sho Typewriter, and the connection of that machine with complainant-appellee and its business.**

(*a*) **Mr. Joseph E. Platt,** a dealer in typewriters and typewriter supplies at New Haven, Conn., was engaged in the sale of the so-called Remington-Sholes typewriter from the latter part of 1897 to the latter part of the year 1898.

R., p. 142.

During the time that Platt sold the Remington-Sholes machine he says: "*People called at my office frequently and asked if that machine was an improved Remington machine, and if it was not manufactured by Wyckoff, Seamans & Benedict, and it required considerable explanation to convince them that Wyckoff, Seamans & Benedict was not the inventors of that machine, and had not placed it on the market to take the place of the Remington typewriter.*" *He found this opinion prevalent among his patrons and the public generally.*

R., p. 144.

He stated that notwithstanding that he circulated *advertisements*, etc., in explanation of the origin of this so-called Remington-Sholes machine, *it did not seem to make any difference*, and he attributed it to the fact that people generally believed it had some *connection* with the Remington typewriter, and was in some way controlled or operated by the Remington people—Wyckoff, Seamans & Benedict. *He attributed this impression or idea in the mind of the public to the fact that the appellant and the Remington-Sholes Company used the name "Remington" prominently.*

R., pp. 145, 147.

From his observations and experience in the sale of the so-called Remington-Sholes typewriter, and the offering of it for sale, and the sale thereof, under the name Remington-Sholes or Rem-Sho typewriter, *he said that there was a decided impression created in the mind of the public that it was a Remington machine.*

R., pp. 145, 146.

The belief that it was a product of appellee was caused by the use by appellants of the name "Remington," and not by reason of witness' previous connection with appellee.

(b) **Walter M. Scheumaker** testified that in a conversation with **H. I. Seddon,** who was, in 1898, manager of the typewriter department of the appellant at 341 Broadway, New York City, that Seddon said to him that: "A man came into our store in New York only the other day, and says he, 'Is this the Remington Company?' He (Seddon): 'Yes, sir, it is,' the party, Seddon showing him a typewriter, 'Well, that doesn't look like the Remington typewriter I saw. Are you sure this is the Remington Company?' He, Seddon, replying: 'Yes, sir, this is the Remington-Sholes Typewriter Company.' 'Well, who sells the Remington Typewriter?' He (Seddon) replying: 'I don't know of any Remington Typewriter Company selling the Remington typewriter. There is a Wyckoff, Seamans & Benedict who sells the Remington Standard typewriter.'"

Granting that this witness acted in the capacity of a detective, still *Seddon was not called as a witness to contradict his testimony, and hence it must be assumed that it is a truthful statement of the transaction as narrated by Seddon to the witness.* The *prospective* purchaser, who interviewed Seddon, was undoubtedly one of the "lots of people" who called at defendant's office, No. 341 Broadway, mentioned by Parker in his testimony.

(*c*) **Mr. A. Palmer Brooks**, a salesman in the service of the complainant-appellee, dealing with business houses at the lower end of the City of New York, Borough of Manhattan, and who occasionally had interviews with persons that had purchased the so-called Remington-Sholes Typewriter, says that on several occasions he was informed by people that they had just purchased a Remington machine at a better figure than he could have given them, and on examining these machines discovered that they were not of complainant-appellee's manufacture, but were Remington-Sholes typewriters.

R., pp. 242, 245.

(*d*) In the fall of 1898, one of the Remington-Sholes machines was placed on trial with Peck Bros. Company at New Haven, Conn., at the request of Mr. Charles Henry Downs, the secretary of said company. Mr. Down states *that the name "Rem-Sho" led him to believe that it was the product of the Remington people*, coupled with the fact that Mr. Platt was, as he supposed, still selling the Remington typewriter.

R., pp. 246-248.

(*e*) **Elizabeth Wilson**, of Washington, D. C., who had been an operator upon the Remington typewriter for 10 years prior to May, 1899, and was engaged in such service in the office of the United States District Attorney, Washington, D. C., stated that a letter came to the District Attorney about October, 1898, from the Remington-Sholes Company, referring to the Remington-Sholes machine. *She said that the impression made upon her mind was that the Remington-Sholes machine was one which was being put out by the concern which had manufactured the "Remington" machine, and that the name "Sholes" or the word "Sholes," was the name of a man who had made some very important improvements, and therefore his name*

*had been used in connection with the old Remington typewriter; and naturally that the Remington-Sholes was an improved Remington typewriter.*

R., pp. 263–265.

The name "Remington," although linked with Sholes indicated to her mind Remington connection in typewriter production and implied the old manufacture.

(*f*) **John S. Bayes,** a salesman for appellee in the City of Chicago, testified that in canvassing that city and in offering for sale and selling typewriters he came in contact with people who made inquiry of him concerning the origin of the so-called Remington-Sholes Typewriter. He saw people who were under the belief that *this machine was either made by the complainant-appellee, or that they were interested in its manufacture.* Appellants' assertion that the inquiry ceased after the adoption of the abbreviation "Rem-Sho" is unwarranted. Witness said it was "quite general" three or four years ago, not that it had ceased to be made in 1899.

R., pp. 279, 280.

(*g*) **Albert D. Brown,** resident manager for appellee at St. Paul, Minn., and who had occupied that position since May, 1884, testified in June, 1899, as follows: "*About four months ago a gentleman by the name of Pierce, living at Rochester, Minn., called in our office in St. Paul and he had with him a card that was either sent or left with him by the 'Rem-Sho' people, and the card was printed 'Remington-Sholes.' He came in our office at St. Paul thinking that it was a branch of their office in Minneapolis, I suppose, as that was the address that was on the card, and wanted to see that machine.* We, of course, were unable to show him the 'Rem-Sho,' but did show him the 'Remington.'" This was a particular instance. He further testi-

fied, "I have had people ask me 'what about this new machine that you have recently put on the market?' and after talking with them find out that they refer to the Rem-Sho machine."

The people making the inquiry associated that machine with complainant-appellee and believed it to be its product.

R., pp. 282–285.

(*h*) **Silas W. Crandall,** the manager of the Chicago office of Wyckoff, Seamans & Benedict, testifying in June, 1899, in respect to the character of inquiries made of him concerning the origin of the so-called Remington-Sholes typewriter, and the impression in the mind of the public as to the origin of that machine said: "The inquiries were made by individuals who were interested in the subject of typewriters, who called at our store, or who interrogated me in some other place, public or private, regarding the advertisement of the company referred to, or regarding their location, their store or office, or regarding a call they had received from some agent, representative, or salesman, as to what if any, relation we had to the typewriter concern referred to in the question, *whether the machine was made at our factory or a factory with which our house had some connection*, whether the officials of our company had business connection with the typewriter company referred to in the question, *whether, as in some cases, the machine called the 'Remington-Sholes' or 'Rem-Sho' was an improved 'Remington.'* The impression in the mind of the inquirer was beyond any question whatever an impression that the machine which was the subject of inquiry possessed merit of manufacture in some degree of the same character as the Remington typewriter. There was without exception in the case of such inquiries referred to, *a confusion on the part of the inquirer as to the manufacture*, and in some instances even of the sale of the so-called Remington-Sholes or Rem-Sho as distinct from the Remington typewriter."

*The witness found the impression in the mind of the public to be that the so-called Remington-Sholes, or Rem-Sho typewriter, was a product of complainant.*

R., pp. 288, 290, 291, 303, 304.

With respect to specific cases the witness said that they would arise in the ordinary transaction of business, no memorandum had been made by him and no attempt had been made to recollect the names of houses. Hence he could not give the details of many of the cases.

R., 308.

In consequence of less competition with them in Chicago the cases were then, 1899, less frequent.

R., 308.

The witness only testified concerning *his own personal observation.*

It was not the adoption of abbreviated name—"Rem-Sho"—that decreased the instances of confusion in Chicago, but because the sale of the appellant's machine was then being pushed more vigorously in other territory.

(*i*) In June, 1899, **Eugene A. Conyne,** testified that he had been a salesman in the employ of Wyckoff, Seamans & Benedict, since Sept., 1892. He sold typewriters for the appellee and frequently came in contact with purchasers and users of writing machines. He said that he found on a number of occasions that prospective customers were believed that the Remington-Sholes machine was either manufactured by or in some way connected with appellee. Witness mentioned two specific cases of confusion.

R., pp. 312, 313, 314.

(*j*) **Donald McKay,** another salesman in the service of appellee, at Chicago, referred to instances where persons believed that the so-called Reming-

ton-Sholes typewriter was put upon the market by the appellee. The *confusion* was due to the *similarity of names*. He said the abbreviated name "Rem-Sho" caused misunderstanding and misconception among buyers of machines and that there was *confusion* in the public mind as to whether the "Rem-Sho" machine was the same as the "Remington."

R. pp. 316, 317, 318, 319, 320.

(*k*) **Wm. J. McNally,** city manager of appellee's Chicago office during a portion of the years 1898 and 1899, testified that: "*During the past year or 14 months that I have been in the office as city manager, there have been quite a number of instances of persons calling in at our store, mistaking our place for that of the Remington-Sholes; they have been expressmen, messenger boys and other people, who, of course I didn't know what their business was, who would ask if our company and the Remington-Sholes were not the same institution.* They would seem much *surprised* when they were informed otherwise and given directions for the office of the Remington-Sholes Company.

R., pp. 320, 321, 326.

(l) **George E. Field,** testified in 1899, that he then was and had been manager of the Indianapolis office of the appellee since Jan., 1885. He was engaged in selling the Remington typewriter and supplies, and in the repair of Remington typewriters and renting such machines. The Remington-Sholes Company and its machine had then been on the market in the city of Indianapolis for about a year and a half. He was asked whether or no he recalled any instance or instances where expressmen or people having business with the appellee had called at the Remington-Sholes Company's office by mistake, or any instance where people having business with the Remington-Sholes Company had called at appellee's office supposing

it was the Remington-Sholes office. In reply to this inquiry he testified as follows: "I don't recall any instance where a party has called at the 'Rem-Sho' office thinking that he was entering the 'Remington' office, *but we have had a number of calls at our office from people who had goods to deliver to the Rem-Sho office. Yesterday a man called with two typewriter cylinders or platens; he said he had reground them for the Remington people.* And he seemed somewhat *surprised* when I told him that he did not do the work for us, as we did that kind of work ourselves. *This week a driver from the Indianapolis Stove Company called and wanted to deliver to us a number of metal blotter baths saying that they were for the Remington people. Draymen have sometimes brought typewriters to us when they were intended for the Rem-Sho people, as well as the drivers for the express companies.*"

The witness stated that he had not ordered any of the articles mentioned. He further testified: "I have frequently been asked what *connection we had with the Rem-Sho typewriter.* Only a few days ago, a young man who was a stranger to me asked me *what this new machine of ours was*, while I was standing on the street corner waiting for a car."

The person making the inquiry referred to the so-called Rem-Sho typewriter. There was "*a great deal of confusion*, particularly in telephone calls."

R., pp. 336, 337, 340, 341, 342.

(*m*) One **A. J. Scorer,** who had been a salesman in the Pittsburg office of the defendant-appellants from December, 1897, to July, 1898, stated that when he was canvassing among users of typewriters for the purpose of selling the "so-called "Remington-Sholes" typewriter, inquiries were made of him concerning the origin of that machine and as to who were the makers thereof. Many persons making the inquiries would ask him *what connection the Remington-Sholes typewriter had with the Remington Standard machine.* He testified that *so many*

people made the inquiry of him that he could not recall all of them.

R., p. 347.

He also stated that *he attributed the fact of such inquiry being made, to the use of the name "Remington" in connection with the manufacture and sale of the so-called Remington-Sholes typewriter.*

R., p. 351.

(*n*) An article in the newspaper, published in the city of Montreal, Canada, known as **"La Presse,"** dated June 29, 1899, shows *confusion* in the mind of the writer of the article, *who appears to have believed that the machine which he saw exhibited was a "Remington" typewriter.* This fact is manifest, as he calls the machine operated by McGurrin and *explained to the business college by Franklin Remington as the "little Remington machine."*

R., pp. 378, 385, 386; R., pp. 901, 903.

(*o*) **F. Lyman Browne,** a dealer in all kinds of tpyewriters since 1881, located at 241 Broadway, New York City, testified that *he had heard the so-called Remington-Sholes typewriter called the "Remington," and by some the "improved Remington."*

R., p. 247.

(*p*) It is shown by the testimony of **Wm. A. Smith,** and by that of **John S. Bayes,** that shortly prior to Nov. 14, 1899, the W. B. Gibson Company, of Chicago, notified Wyckoff, Seamans & Benedict's Chicago office that they intended to buy a second-hand machine, and wanted to know if appellee could sell them one. Bayes answered they could not, but that appellee would be very glad to send them a new Remington machine, on two or three days' approval, which was assented to. Subsequently, and on the 17th of November, 1899, the shipping clerk made out a receipt in the city delivery book, addressed to Remington-Sholes

Company, etc., and that, together with the Remington machine, was delivered to an expressman, who first undertook to deliver the machine to the *Remington-Sholes Company*, but subsequently delivered it at complainant-appellee's Chicago office. The clerk who billed the machine says that in passing down Madison Street he had noticed the name "Remington," or "Remington Company," upon appellee's store window, and further states that his employers had quoted prices for their goods to the Remington-Sholes Company prior to this incident. *The use of the name Remington by the Remington-Sholes Company produced confusion in the minds of these persons, and hence the entry of the name of Remington-Sholes Company in the delivery and receipt book of the Wm. B. Gibson Co.*, and the attempt to deliver the machine to that company.

R., pp. 475–481.

(*q*) **Wm. A. Catlin**, resident manager of the appellee at Kansas City, Mo., testified that there was a newspaper published and circulated in Kansas City known as the "Kansas City Star." *That on October 19th, 1900, an advertisement appeared in said newspaper entitled, "Three stenographers wanted," and containing the direction to "apply Rem-Sho typewriter office, 25 E. 9th Street." That on the day following, to wit, the 20th of October, stenographers called at the complainant-appellee's office in Kansas City, 105 W. 9th Street, saying that they had called in answer to their advertisement, and wanted to know where the positions were. Others made inquiry by telephone. The witness states that there were from three to five calls at appellee's office in response to said advertisement, and two over the 'phone.* Appellee then maintained an employment department in its Kansas City office, through which stenographers were assisted in obtaining employment, and persons calling in response to said advertisement supposed that the appellee

was short of stenographic help, etc. The persons called in response to this advertisement, which was not inserted by appellee.

R., pp. 529–532.

(*r*) **J. Franklyn Hobbs** testified that prior to September 1, 1900, he was manager at Chicago of the retail department in the office of the Remington-Sholes Company. *He said that while he was city manager thereof they received numerous calls by telephone to repair Remington typewriters.* The callers usually asking: "If this was the 'Remington' typewriter, or the Remington Company."

R., pp. 550–553.

It appears that in some cases the Remington-Sholes Company in response to such calls repaired Remington typewriters.

(*s*) **Richard Daniel,** manager of the sales office of the Remington-Sholes Company at St. Louis during the year 1899, testified that in some cases parties inquired by telephone "*if that was the Remington Typewriter Company.*" In other cases the inquirer wanted to see a representative thereof about the purchase of a machine. In some cases a repair man *was wanted and in some instances repairmen of the Remington-Sholes Company were sent to repair Remington typewriters.*

R., pp. 561–562.

(*t*) **Wm. C. Goodhue,** an independent dealer in typewriters and typewriter supplies, stated that *he had inquiries made of him as to the relations between the Remington-Sholes Company and the makers of the Remington typewriter*, and as to the origin of the Remington-Sholes writing machine.

R., pp. 563–565.

(*u*) **S. W. Crandell** being asked to state any facts other than those he had testified to specifically, showing or tending to show confusion in business,

etc., testified as follows: "I recall cases where a concern being solicited by our house has *informed us that they had received a call from our representative at a recent prior date*, which fact being unknown to us caused us to make inquiries, and it developed the fact that the representative they referred to was not in our employ, *but on referring to the business card left by him was a salesman of the Remington-Sholes Company, or representing the Rem-Sho machine.* There have been cases also, of where callers at our store have interrogated us respecting *some improvement in our machine as it was understood by the customer, or at least some change which did not show on the different models we exhibit*, and then in the course of the conversation *we would learn that the customer had obtained the impression that we mere manufacturing a different model than that exhibited, and which he finally described as the 'Rem-Sho.'*"

Mr. Crandall further testified: "We have been called up by the *telephone* company, and conversation opened with us by some business house referring to some business matter, *and it would be noted by us before we had gotten very far along in the conversation that they had intended to call up the Remington-Sholes Company.* * * *

"I recall an instance of an official calling at our store representing a title and trust company, who had been talked to by some typewriter salesman, who had discussed with him the merits and demerits of the 'Rem-Sho' machine, *and he seemed to have no other idea than that he would learn more of the machine by talking with us and who, he seemed to think, were the manufacturers and dealers of the machine.*" This official called at appellee's place of business for the purpose of making inquiry concerning the so-called Rem-Sho typewriter.

R., pp. 303–304.

*The evidence of the foregoing witnesses shows that there was a great deal of confusion in the*

*mind of the public concerning the Remington-Sholes Company and its machine, and in respect to their connection with appellee's writing machines and business. This evidence came from many independent sources, and there can be no doubt whatever as to its credibility and persuasive character.*

**3rd. Evidence of confusion in the mind of the public is further emphasized and shown by numerous letters and documents which have been introduced in evidence by the complainant-appellee in this case.**

**(1.) Hansen letters and correspondence.**

The facts concerning the *Hansen* letters are proven by **Silas W. Crandall** (R., pp. 292, 294), and by the evidence of **Stephen H. Farnham** (R., pp. 281, 282).

It appears that at the time of the correspondence Hansen was proprietor of the Spencerian Business College, located at Waukegan, Ill. Hansen used two "Remington typewriters" and one "Caligraph" in his school. He purchased a typewriter of appellee some time prior to November 10, 1898, paying a portion of the purchase price of the machine in cash and gave his notes for the balance. He failed to meet his obligation in November of that year, and his attention being called to the fact, he subsequently, and on December 12, 1898, wrote a letter, stating that he had sent the remittance due in November, and addressed it to the "Remington Typewriter Company," Chicago. He received an acknowledgment of the remittance from the "Remington-Sholes Company." *Thereupon he requested the return of the money order for $10.00 which had been delivered to and received by the Remington-Sholes Company, who returned the remittance to him in their letter of December 15, 1898.*

R., pp. 292, 293.

The correspondence is reproduced, and will be found in R., pp. 941–946.

*Hansen was actually indebted to appellee, and the remittance of $10.00 was intended for appellee, but was received and, for some reason not explained, retained by the Remington-Sholes Company, until he found out that it had not been received by appellee. The money order appears to have been sent on Nov. 15, 1898, and was retained by the Remington-Sholes Company until Dec. 15, a period of about one month.*

As already observed, Hansen's letter was addressed to complainant-appellee as the "Remington Typewriter Company," which was and is one of appellee's trade-names, *and by which it is more generally known to the public and to owners and users of typewriters than by its true corporate name.* This correspondence shows that appellee's trade-names, "*Remington*" *and* "*Remington Typewriter Company*," *are the essential particulars with the public*, and being used by the so-called Remington-Sholes Company, the name "Sholes" was not regarded by the public as a distinction of any significance whatever.

**(2.) Potter letter and envelope.**

The envelope containing the letter of S. V. Potter, dated at Decorah, Ia., Oct. 15, 1898, addressed to Remington Typewriter Company, Chicago, Ill., was received by appellee after it had been opened by the "Remington-Sholes Company." Wyckoff, Seamans & Benedict received it from the letter carrier in Chicago, enclosed in an envelope bearing the printed card of the Remington-Sholes Company, of Chicago, Ill.

R., p. 295, 947.

It will be noted that this Potter letter was like many others, addressed to "The Remington T. W. Co.," and inquiry was made whether or no the appellee had any second-hand Remington machines, and if so, the price thereof. *This letter and envelope show that the writer thereof knew the appel-*

*lee as the Remington Typewriter Company; that the letter was received and opened by the Remington-Sholes Co., and subsequently sent to and received by the appellee.*

**(3.) Dillingham letter, etc.**

A letter addressed to the appellee, at its Chicago office, 146 Monroe Street, on or about Aug. 26, 1898. This letter enclosed a letter from Wallace J. Dillingham, dated Warsaw, Ind., who was principal of a business university at that place, and the letter reads as follows: "Remington Typewriter Company, Chicago, Ill. Gentlemen: *I sent you an order for a machine (rental) nearly a week ago. Why have I not heard from you?*" This letter was forwarded by the Remington-Sholes Company to the appellee, wherein they say as follows: "Enclosed please find letter, which we imagine must be intended for you, as the sender is unknown to us." *This letter, containing an order for a machine, was intended for appellee, but was received and opened by the Remington-Sholes Company.*

R., pp. 295, 297, 933, 935.

**(4.) Keokuk envelope.**

The appellee received from the letter carrier in Chicago an envelope containing a letter post-marked at Keokuk, Ia., Nov. 6, 1897, addressed Remington Typewriter Company, Chicago, Ill. Endorsed in copyable pencil across its face were the words: "Opened by mistake, R. S. Co." and below "Remington-Sholes Company"; printed with a rubber stamp, "F. V. Paulsen, Treasurer." Also written with a pencil, "Wyckoff, Seamans & Benedict, Madison Street." *This letter and envelope were delivered by mistake to and opened by the Remington-Sholes Company. The letter was intended for the complainant.*

R., pp. 295, 299, 939.

(5.) Appellee also received, from the letter carrier in Chicago, an envelope bearing the printed card of **Commonwealth Iron Co.**, Commonwealth, Wis., addressed to the "Remington Typewriter Agency," Chicago, Ill. Endorsed across the face of the envelope, with copyable pencil, were the words: "Opened by mistake, Remington-Sholes Company." *This letter was intended for the complainant, but was by mistake delivered to the Remington-Sholes Company.*

R., pp. 295, 8, 300.

**(6.) Appellee's Exhibit Remington-Sholes Company Envelope, Oct. 21, 1898.**

R., pp. 295, 296, 300.

*The envelope shows that the Remington-Sholes Company recognized the fact that one of appellee's trade-names was "Remington Standard Typewriter Company."*

**(7.) Barnes letter.**

A letter from one H. W. Barnes, addressed to the Remington Standard Company, Chicago, Ill., was received by appellee at its Chicago office shortly after the day of its date. This letter refers to the fact that the writer had previously written appellee in reference to copyholders, but that his letter had by mistake been delivered to the Remington Sholes Company. Barnes was a customer on the books of appellee at the time he wrote the letter, and Remington-Sholes Co. was then a manufacturer and a vendor of copyholders.

R., pp. 296, 301, 302, 872.

**(8.) A. Rogers Lee letter.**

On the 4th day of November, 1898, the appellee received a letter at its New York office purporting to have been written by one A. Rogers Lee. (R., pp. 236, 237). In said letter the writer thereof says: **"We purchased a Remington-Sholes ma-**

**chine from your company, somewhat more than six months ago. This machine has not been used very much during that time and the type have worn very poorly. Will you send one of your men over for the machine and have the type put in proper condition?"** * * * Lee was examined as a witness for appellee, and stated that the signature to the letter was in his genuine handwriting. He dictated the letter to the stenographer and typewriter, who wrote it before his signature was appended thereto. At the time Lee wrote the letter a Remington-Sholes machine, and not a Remington typewriter, was in use in the office of one Pelletreau, for whom he was managing clerk. *When he wrote the letter he supposed that appellee was the maker and vendor of the so-called Remington-Sholes machines, and by reason of that fact he addressed the letter to the appellee. He says he presumes that the name "Remington" and the names "Remington-Sholes" were the cause of his addressing the letter to the appellee.*

R., pp. 387, 389, 870.

**(9) Noble letter.**

In the latter part of September, 1899, the appellee received a letter purporting to be written by one W. K. Noble of Ft. Wayne, Ind., addressed to the "Remington Typewriter Company," Chicago, Ill., asking for their catalogue of typewriter desks, etc.

R., p. 470, 871.

**(10) Springer letter and envelope.**

On the 25th of August, 1899, the appellee received an envelope by post, bearing the card of the Remington-Sholes Company, containing the letter of C. R. Springer, and the letter enclosed in an envelope addressed to "Remington Typewriter Company," postmarked Aug. 24, 12 P. M., with pencil writing thereon signed Hobbs, Mgr. *This letter was opened by mistake by Mr. Hobbs, who was then city man-*

*ager of the Chicago office of the Remington-Sholes Company.*

R., pp. 470, 471, 932, 934.

In his letter, Mr. Springer says that *he is thinking of buying a typewriter and would like to have the appellee send a representative to him to quote prices, terms, etc.* The evidence of Messrs. Smith and Crandall shows that Springer resided in Chicago and that in September, 1899, he purchased a No. 6 Remington typewriter of the appellee.

R., pp. 467, 471.

**(11.) Ginn & Co. letter and envelope.**

This letter, purporting to have been written by one W. T. Field to one Kellogg, was received by appellee at its Chicago office on the 22d of August, 1899, the envelope being *endorsed in pencil, "opened by Remington-Sholes Company," and on the front of the envelope, "Try Wyckoff, Seamans & Benedict, Madison Street, City." The letter was intended for one Paul Kellogg, a salesman in the employ of appellee who was well acquainted with Field, the agent of Ginn & Co., publishers in Chicago.*

R., p. 472, 936.

**(12.) Richard J. Ton postal card.**

This postal card was delivered to the Remington-Sholes Company, at its Chicago office, by the postman, and afterwards mailed to appelee. The sender thereof, at the time he wrote the postal, owned a No. 5 Remington typewriter, and appears to have addressed his communication to the "Remington Typewriter Company, Dearborn St., Chicago," which was the general office, salesroom and factory of the "Remington-Sholes Company." The writer requested that a man be sent to repair his Remington machine.

R., pp. 479, 480, 488, 872, 953.

**(13.) Illinois Central Railroad Company freight bill.**

*A freight bill of the Illinois Central Railroad Company directed to "Rem Typewriter Company 127 Rees Str." was sent by said railroad company to the appellee, whose cashier handed their shipping clerk eighty cents to pay the freight on the goods.* The freight bill was directed to "Remington Company," and the shipping clerk sent an expressman with the bill and eighty cents for the goods. When the goods arrived at appellee's Chicago office, the shipping clerk noticed the packages were addressed "Rem-Sho Typewriter Company" together with the factory address of that company. He thereupon telephoned the Remington-Sholes Company that these packages were in appellee's possession subject to their order. *Subsequently the Remington-Sholes Company sent their expressman for the goods and reimbursed appellee for the amount paid thereon.*

R., pp. 481, 482, 955.

**(14.) Mumaw letter and envelope.**

On or about Jan. 29, 1900, one H. A. Mumaw of Elkhart, Ind., deposited in the mail, *a letter and a check enclosed in an envelope directed to Remington Typewriter Company, Chicago, Ill., which letter was intended for the Chicago office of appellee. The envelope containing the letter and a check were delivered by the postal authorities of Chicago, the office of the Remington-Sholes Company, 127 Rees Street, Chicago; the envelope was opened by an employee of the Remington-Sholes Company, and there was written in pencil across the face of the envelope the words "Opened by mistake, Remington-Sholes Company, A. L. Fairlien, Aud."* The letter, envelope and check were returned to the postal authorities by Remington-Sholes Company, and subsequently delivered at the Chicago office of appellee. It will be observed that the letter and envelope were addressed by H. A. Mumaw of the

Normal School and Business Institute at Elkhart, Ind., to Remington Typewriter Co., Chicago, Ill. *In the letter a check was enclosed for the sum of $46, payable to the order of Remington Typewriter Company.* In the letter, Mumaw refers to a student who would, subsequently, call at appellee's office in reference to a position as stenographer, etc.

R., pp. 487, 488, 542, 543, 991-994.

**(15.) Mett letter and envelope.**

This letter and envelope were received by the appellee at its New York office in due course of mail. Mr. H. B. Wilson, who opened the letter, testified concerning the receipt thereof.

R., pp. 492, 493.

A copy of the letter will be found in R., p. 869. It was addressed to appellee at its New York office, and purports to have been written by one Henry Mett, of Portland, Ore.; bears date Dec. 6, 1899, and reads as follows: "Gentlemen: I beg to bring to your notice that I have been appointed by Messrs. Kunst & Albers, of Wladiwostok, as their purchasing agent, with offices in Portland, Ore. *As our house exports typewriters quite extensively to Siberia, I beg to quote to me prices on regular Russian Remington-Sholes, f. o. b. Portland.* Hoping for an early reply, I am, yours truly, Henry Mett." *This letter clearly shows confusion in the mind of the writer as to the source of the manufacture of the so-called Remington-Sholes typewriter, and is evidence of the fact that he supposed that said Remington-Sholes Typewriter was manufactured and sold by appellee.* In other words that it was a Remington machine.

**(16.) Metropolitan Life Insurance Company letter.**

This letter was addressed to *Remington & Co.*, 11th and Chestnut streets, Philadelphia, and requested that appellee put its writing machine in

order. *It was delivered by the postman at the office of the Remington Sholes Company, and subsequently brought to Wyckoff, Seamans & Benedict's Philadelphia store, by a representative of the Remington Sholes Company, who stated that it had been received at their office, and opened by mistake.*

R., pp. 495, 496, 956.

**(17.) Crescent Produce Company letter.**

This letter was addressed to the Remington Typewriter Company, Kansas City, Mo., and was received at the office of appellee, in that city. The letter purports to have been sent by the Crescent Produce Company of Newton, Kansas, and requests appellee to advise the writer where their representative, who had called at the office of the Produce Company the day before, could be communicated with. The inquiry in this letter evidently referred to one Heater, who was a travelling salesman of the Remington Sholes Company. The writer undoubtedly thought that Heater was in the employ of the appellee, and was selling the Remington typewriter.

R., pp. 529, 535, 988.

**(18.) Macomb Shorthand School letter and envelope.**

This letter was addressed to *the Remington Typewriter Company, Chicago, Ill., and was opened by mistake by the Remington-Sholes Company.* It purports to have been written on the 6th day of November, 1900, at Macomb, Ill. The letter refers to one Lizzie Davis, who was sent to the office of appellee in Chicago, for the purpose of obtaining a situation. The letter is signed by one I. F. Meyer. Mr. Crandall testified that Miss Davis had applied to appellee for a position, and had been given an examination as to her qualifications. *The letter referred to matters that were known to appellee's employees and was intended for appellee.*

R., pp. 540, 541, 989, 990.

**(19.) R. H. Edmunds Company, and Rem-Sho Booklet.**

The envelope and the pamphlet therein, were received by appellee in the ordinary course of mail at its New York office on the 31st of May, 1900. On the back of the pamphlet, or Rem-Sho booklet, is written the following question or inquiry: "*Is this the same as your writer?*" *over the signature of the R. H. Edmunds Company of Columbia, S. C.,* (R. [illegible] pp. 628, 998). *The communication was addressed to Remington Typewriter Company, New York, N. Y.* It is plain that the person who made the inquiry was in doubt as to whether the so-called Rem-Sho typewriter was the same as the Remington. *It will be observed that the doubt in the mind of Edmunds, the writer, was not removed by any statements contained in the booklet,* nor by abbreviated name "Rem-Sho." The name Remington, which was printed upon the cover of the booklet, as a part of the name of the company that manufactured the Rem-Sho typewriter, evidently led the writer to believe that this machine was, or might be, the same writing machine as that manufactured by appellee or came from the same source.

**(20.) Davis & Rose letter.**

It appeared from the evidence of one Culpeper, that appellee was carrying on the typewriter business *in Virginia and North Carolina, under the name of the Remington Standard Typewriter Company,* the principal office being located at Richmond, Va. Culpeper was then the manager of appellee for the States of Virginia and North Carolina. He was acquainted with the firm of Davis & Rose, located at Henderson, N. C. He had been acquainted with Davis for some years prior to September, 1900, and Davis had been using a No. 2 Remington typewriter for eight or nine years prior to the time when Culpeper gave his testimony. Culpeper stated that the Remington-Sholes typewriter had then been on the market in

North Carolina for about two years and a half. *The letter addressed to the Remington Typewriter Company, Richmond, Va., purporting to have been written by the firm of Davis & Rose, was received in due course of mail on the 28th of September, 1900, at the Richmond office.* Several letters had previously been received at the Richmond office, from Davis & Rose, relating to business transactions with that firm, and Culpeper said that to the best of his knowledge and belief, they were in the same handwriting as that of "Complainant's Exhibit, Davis & Rose letter."

R., pp. 110, 113, 1000.

**The body of the Davis & Rose letter reads as follows: "Gentlemen: Send catalogue for Rem-Sho typewriter. If you do not make this machine please turn this over to the proper branch, as we understand it is a part of your plant." Obviously the writer of the Davis & Rose letter believed that the Rem-Sho typewriter was either a product of appellee or that it was manufactured by a concern that was a branch or a part of appellee's plant or business.**

**(21.) Chester letter.**

This letter was addressed to *Remington Machine Company*, 10th and Chestnut Streets, Philadelphia. It bears date March 15, 1900, and was written by one Black, President of the Chester News Publishing company, which at that time published a newspaper called the "Chester News." *The letter was received by the Remington-Sholes Company at its Philadelphia office, and after being opened by the manager, F. L. Sholes, was sent to the Philadelphia office of appellee, for whom the communication was intended. It contained a request that a man be sent to repair a machine.*

R., pp. 1201, 1202, 995, 996.

**(22.) Sundry other letters.**

Appellee's witness Crandall was asked whether he knew of any other instances than those specifically named by him, where letters, which were intended for appellee were delivered by mistake or inadvertance to the Remington-Sholes Company. In answer to this inquiry the witness said: "*There have been many such instances. The letters having been delivered by the letter carrier to the Remingington-Sholes Typewriter Company, have been brought to us after being opened by the Remington-Sholes Company, and we have placed the matter in the envelopes in the hands of the Post Master of Chicago, in order that the letter carriers might be called to account. The instances of where such envelopes have been placed in the hands of the Post Office, and where the envelopes were not returned to us by the Post Office, were more in number according to my best recollection than the number of envelopes referred to in the questions that have been asked me in the examination to-day.*"

R., p. 302.

**Letters, communications, etc., intended for the Remington-Sholes Company, which came to and were received by the appellee at its offices.**

(23.) About Nov. 25th, 1899, a communication was addressed to C. N. Fay, Dearborn Street, City, by Siegel, Cooper & Co., of Chicago. This communication came to the Chicago office of Wyckoff, Seamans & Benedict, and was forwarded by them to C. N. Fay, who then was and now is President of the so-called Remington-Sholes Company.

R., p. 951.

(24.) In December, 1899, **D. A. Leffingwell, Jr. & Co.**, of Ashland, Ky., addressed an envelope to the Remington Typewriter Company, Chicago, Ill., enclosing a letter addressed to "Remington-Sholes Typewriter Company, Chicago, Ill." They stated

that they intended purchasing a second-hand typewriter, and desired to know at once *if said company had a late model of a Remington on hand*, and at what price, etc. This communication was received by appellee, in due course of mail, and after the envelope was opened and it was seen that the letter was intended for the "Remington-Sholes Company," it was forwarded to said Company. Inasmuch as a large portion of the mail of appellee was addressed to the "Remington Typewriter Company" which was appellee's trade-name, the letter-carrier delivered the letter to the appellee.

R., pp. 949, 950.

(25.) In or about the month of July, 1899, **a letter was received at the Chicago office of appellee addressed to Franklin Remington, care of Remington Typewriter Company.** The letter was opened by mistake, and the error being discovered, it was immediately forwarded to the Remington-Sholes Company.

R., pp. 460, 868, 931, 948.

(26.) In January, 1900, a letter was delivered by the mail carrier in the regular course of mail, at the office of appellee, written by a person at the Hotel Scott, Caldwell, Ohio. **The letter was addressed to Mr. Charles Norman Fay, Mgr. Remington Typewriter Company, Chicago, Illinois.** *The envelope containing the letter was returned to the mail carrier on the same day and was delivered in the regular course of mail to Charles Norman Fay, president of the Remington-Sholes Company at the office of that company in Chicago.*

R , pp. 556, 981.

(27.) Mr. John F. Soby, manager of the Philadelphia office of appellee, stated that in October, 1899, **there was a small package delivered at the office of Wyckoff, Seamans & Benedict, addressed to the Remington-Sholes Company,**

the imprint on the label indicating that it had been sent from their London office. Directly the package was received by appellee, it was sent by Mr. Soby to the Remington-Sholes Company's office in Philadelphia.

R., p. 496.

*The foregoing letters, etc., relate to sundry matters and transactions. One of them contained a money order, and another a check, which were intended for appellee, but received by Remington-Sholes Co. Some of these letters contained inquiries in respect to the price of Remington machines; others related to rental of machines and the repair thereof, while still others related to various inquiries such as situations for typewriter operators, that catalogues be sent, and whether or no the Rem-Sho machine was the same as the Remington, etc. In some instances letters, packages and freight bills, which were intended for Remington-Sholes Co, were delivered to appellee. Most of the communications, however, were intended for the appellee, and were addressed to it as the "Remington Typewriter Company," but were received by Remington-Sholes Co.*

It is to be noted that "Complainant's Exhibit Rem-Sho Indianapolis Envelope" was introduced in evidence to show that it was common for appellee to receive letters, etc., at its Indianapolis office addressed to the "Remington Typewriter Company," and as further tending to show that confusion in business was likely to arise by Remington-Sholes Co.'s use of the name "Remington" in connection with its business and machines.

All of the letters relating to the Hansen matter (R., pp. 941–946) were put in evidence so that the whole transaction might appear of record.

The letters above referred to were such as came to hand about the time the bill of complaint herein was filed and during the time that complainant's testimony was being taken; that is in the years 1898, 1899 and 1900.

Counsel for appellants asserted, in the court below, that the record herein shows that only twelve letters intended for appellee had been delivered to the *Chicago* office of Remington-Sholes Co.; but in this connection it is to be borne in mind that appellee's witness Crandall, who produced many of these letters, was interrogated and testified as follows: "54 Q. Do you know of any other instances where a letter which was intended for Wyckoff, Seamans & Benedict was delivered by mistake or inadvertence to the Remington-Sholes Company. I mean other than those which have been produced and put in evidence after having been identified by you? A. There have been *many* such instances. The letters having been delivered by the letter carrier to the Remington-Sholes Typewriter Company have been brought to us, after having been opened by the Remington-Sholes Company, and we have placed the matter in the envelopes in the hands of the Postmaster of Chicago in order that the letter carriers might be called to account. The *instances* of where such envelopes have been placed in the hands of the Post Office, and where the envelopes were not returned to us by the Post Office, *were more in number*, according to my best recollection, than the number of envelopes referred to in the questions that have been asked me in the examination today."

It is, therefore, plain that the record does not show *many instances of confusion* in the mails at Chicago, which came to the personal attention of Mr. Crandall, the manager there of appellee's office. Another fact to be borne in mind is that notwithstanding this matter was many times brought to the attention of the Postmaster and his employees at Chicago, nevertheless *the confusion continued*, and letters which were intended for appellee were delivered to the Remington-Sholes Company, due beyond question to its use of the name "Remington" in its business.

The "Mett Letter," the "Edmonds-Rem-Sho

Booklet," and the "Davis & Rose Letter," show confusion in the minds of the writers thereof in respect of Remington-Sholes Co.'s business and machine. *Manifestly "Rem-Sho" did not differentiate the two concerns or their products.*

Counsel argued below that the mistakes of the letter carriers were of no consequence in this case and cited Sterling Remedy Co *v.* Eureka C. Mfg. Co., 80 Fed. Rep., 105; Dadirrian *v.* Yacubian, *et al.*, 98 Fed. Rep., 872; Goodyear *v.* Goodyear Rubber Co., 128 U. S., 598, as authorities holding that mistakes of letter carriers cannot prove confusion in the public mind as regards the identity of or connection between the appellee and appellant's principal. It is respectfully submitted that neither of the cases cited supports the broad proposition enunciated by counsel. Every case must of course be considered and read in the light of it own particular facts and circumstances.

In the first of the above cited cases, it was held that "Baco-Curo" did not infringe "No-To-Bac," and that there was no similarity in the labels which was calculated to mislead the public. The Court observed that: "There would seem to have been a *few* instances of confusion, such as the sending of letters by druggists intended for one party to the other. Such mistakes occur in every business and are not *sufficient to indicate that there was here intentional or actual piracy* upon the rights of the complainant."

All the Court meant to say in that case was that *in the absence of any other evidence*, a "*few* instances of confusion"—how many does not appear—were insufficient to establish *intentional piracy* on the part of the defendant Just what the character of the mistakes was in that case does not appear. All that can be said is that *in that case* the mistakes were not of a character to convince the Court of *intentional or actual piracy* upon the rights of the complainant.

In respect to the Dadirrian case, *supra*, it is not apparant that it has any *relevancy* to the point to which it was cited.

In the Goodyear case the Court referred to the allegations of the bill, and among others to the averment that by reason of the use of the name "Goodyear Rubber Co."—*which it held was purely descriptive*—much loss and inconvenience to complainant's business was caused, in that telegrams and letters addressed to it had been diverted. That appears to be the *only* reference to the matter under discussion, contained in the opinion of the Court. The Court placed its decision upon the ground that the name of "Goodyear Rubber Co." being a name descriptive of well-known classes of goods, produced by the process known as "Goodyear's invention," was not one capable of exclusive appropriation.

In the Higgins Case, *supra* (144 N. Y., 466), the Court referred to the fact that it was shown on trial that letters intended for the plaintiff containing orders for goods, or relating to other business matters had been sent to the "Higgins Soap Co." "Charles S. Higgins Soap Co.," and "Chas. Higgins Co.," but in general the plaintiff's place of business was added to the address and they were received by the plaintiff. And then adds: "There were produced twenty-eight letters and envelopes of this kind, written within four months after the organization of the defendant and the commencement of the action, and it was stated that these did not comprise all the letters of this description." It is therefore clear that these letters were regarded as of force in the "Higgins" case, and as tending to show that the use of the name "Higgins" was calculated to produce confusion, etc. In the same case at p. 471, the Court also said: "The evidence shows that confusion has arisen, and it is a reasonable presumption that if the defendant is permitted to continue to carry on the business of soap making under its present name the public will be mislead

and the plaintiff's trade diverted, the extent of such diversion increasing with the increase of the defendant's business."

**4th. There was much confusion in telephone service in consequence of the use of the name Remington by appellants.**

R., pp. 303, 307, 311, 340, 552, 561, 562.

**5th. Acts, statements and representations of the agents of Howe Scale Company and Remington-Sholes Company—and their agents and dealers, showing an intent to pirate the good will of appellee's business, and to sell the Remington-Sholes writing machine as and for a Remington machine, or a species thereof, or as a new or an improved Remington machine.**

(a) Thomas F. Crean on behalf of complainant visited certain places for the purpose of ascertaining what representations the appellants and their agents and dealers were making in respect to the Remington-Sholes machine in the sale thereof. He visited Montreal, Canada, in August, 1898, and called at the office of Clement and Clement, who were agents for and dealers in the so-called Remington-Sholes typewriter. *He saw printed catalogues of that machine displayed on a table in their salesroom, and saw a Remington-Sholes machine in their office.* He was informed that it was the office of the *Remington typewriter* in Montreal; that the Remington-Sholes machine was made by the inventors and former manufacturers of the old Remington machine, *and that it was a new improved Remington machine.* He was further informed by Mr. Clement that Sholes had made some recent improvements on the old Remington, and that these recent improvements had been embodied or combined with the good features of the old machine, etc.

*On the entrance door of the office there was painted on the glass the words "Remington Sholes Typewriter."*

R., pp. 106, 107.

Alexander Clement admits that in 1898 the firm of Clement and Clement carried on the business of selling typewriting machines at Montreal and so continued until August, 1899. They began selling the Remington-Sholes machine in 1896 and gave it up at the end of 1899. They acted as dealers.

R., pp. 1305–1306.

The firm of Clement and Clement had *the name "Remington-Sholes," not "Rem-Sho," on the entrance door, painted on the glass, and on the window, in letters about five inches high, "Remington-Sholes Typewriter."*

R., p. 1307.

While Clement denied some of the statements attributed to him he admitted that he had *no recollection* whatever of an interview with Crean at his office in August, 1898, or at any other date.

R., p. 1308.

Clement, like all the other dealers and agents engaged in offering for sale and selling the "Remington-Sholes Typewriter" *appears to have regarded the use of the name Remington-Sholes as one that was calculated to mislead and produce confusion in the mind of the public*, for he says, "There was a strict rule in the office to always make it very plain to inquirers, or intending purchasers, that the Remington-Sholes Typewriter was not the Remington Standard Typewriter."

And again he says, "I gave instructions to the effect that under no circumstances whatever should any one be left under the impression that the Remington-Sholes typewriter had any connection whatever with the Remington Standard Typewriter." *This evidence is illuminative, for it shows that the Remington-Sholes Company and its dealers knew that they were using a name of doubtful propriety and one naturally calculated to produce confusion and deception*, and hence the above instructions to

agents and employees. The company, therefore, had to rely upon the honesty and truthfulness of its agents and employees to prevent deception of the ultimate purchaser.

R., pp. 1308, 1309.

Appellee's good will was, indeed, rendered precarious, if it must rely upon appellants' agents and dealers for protection.

Clement admits that he sometimes stated that the son of Mr. Sholes, who had something to do with the invention of the Remington typewriter, *and the son of Mr. Remington who manufactured the first Remington machine were the inventors of the Remington-Sholes Typewriter.*

R., p. 1310.

These statements, were to say the least, *grossly inaccurate.* It is obvious that Clement, like all the agents and dealers selling the Remington-Sholes machine, was trading largely upon the *reputation of the name "Remington,"* which for many years had been associated with appellee's product and business, and had been made of great value in the typewriter trade by appellee and its predecessors.

(b) Crean visited the office of the Tribune Cycle Company on or about October 4th, 1898. *The Cycle Company was then the representative of the Howe Scale Company for the sale of the Remington-Sholes typewriter in Baltimore, Md.*

Roger E. Lewis, of Baltimore, accompanied Crean and was present at the interview with one J. T. Gillelan, then in charge of the typewriter department of the business. Remington-Sholes machines and catalogues were on exhibition in the store of the Cycle Company. *Gillelan stated to Crean in the presence of Lewis that "he had an improved Remington, and he would be glad to have us look it over."* While examining the Remington-Sholes machine, *Crean asked Gillelan the direct question,*

"*Is this a Remington machine?*" *to which he replied,* "*Yes, it is the new Remington; it is manufactured by the former manufacturers of the old Remington, and was invented by the inventors of the old Remington.*" Gillelan also said that the so-called "Rem-Sho machine" was "*an improved Remington,*" and that it was "*the new Remington, and is a decided improvement over the old Remington.*"

Gillelan further said to Crean that Mr. Remington and Mr. Sholes, whose names were applied to the machine, which he was offering for sale, *formerly made the old Remington*, which they sold some time previously to people called Wyckoff, Seamans & Benedict, and that the only typewriting machine which the Remington people were then manufacturing was the Remington-Sholes typewriter.

R., pp. 108, 109.

The evidence of Crean is corroborated by the testimony of Lewis, who was present at the interview and made *a memorandum* of the conversation shortly after it occurred.

R., pp. 249, 251, 873, 874.

Gillelan's statements were, substantially, the same as those made by other agents and dealers, the purpose being to appropriate the good will and reputation of appellee's business and machine.

Gillelan, as a witness, denied that he made some of the statements attributed to him by Crean and Lewis, but it is perfectly obvious that *his evidence is almost entirley a matter of opinion and not of recollection.* He remembered little, if any, of the conversation that took place between Crean and himself at the interview in the store of the Tribune Cycle Company in Baltimore. In short, Gillelan was a "*nonmi ricordo*" witness.

(c) Crean visited Washington on the 20th of September, 1899. He called at the office of the Remington-Sholes Company, which was then in

charge of one Frank L. Sholes. Sholes showed him a "Remington-Sholes" machine, and stated to him that his uncle, who was the original inventor and had been the manufacturer of the Remington machine, had combined with the Remington people, and that together they were making the "Remington-Sholes" typewriter. Sholes stated that, inasmuch as *the old Remington was no longer made by the Remington people, but by a firm called Wyckoff, Seamans & Benedict, that his machine was now the only Remington machine on the market.*

R., pp. 111, 112.

Sholes was called as a witness, and from his testimony it appeared that *during the month of August, and the major part of September of the year 1898, he was the agent and an employee of the Remington-Sholes Company and had charge of its office in the City of Washington.*

R., pp. 1161, 1162.

Sholes remembered having a conversation with a gentleman representing himself as Francis, whom he supposed to have been Crean, but denied that he made all the statements attributed to him by Crean in his testimony.

**Sholes, however, says: "I did tell him that the Rem-Sho machine was the only typewriter on the market now made by a Remington," meaning F. Remington of the Remington-Sholes Company.**

R., p. 1167.

Sholes testified that he had been with the Remington-Sholes Company almost from its inception, and that while he had no written instructions *he was always told not to confound the name Remington-Sholes with that of the Remington Standard. Implying,* in his case as in that of other agents and representatives of the Remington-Sholes, that *the pros-*

*pective purchaser was likely to be confused or misled by the name used by the Remington-Sholes Company.*

R., pp. 1169, 1170.

Sholes was cross-examined as to whether or no he had seen the statement that the Remington-Sholes was the only machine made by a Remington, in catalogues or other publications circulated by the appellant and the Remington-Sholes Company.

He testified as follows:

xQ. 191. Have you seen the statement, so far as you appear to remember, in *catalogues* circulated by you and by others in behalf of the Remington-Sholes Company? A. *I have seen the statement, "this is the only machine now made by a Remington," in catalogues which have been circulated by me.*

xQ 192. Have you also seen that statement *in any advertisements in newspapers or any publications* in which the same statement was made? I mean publications advertising the Remington-Sholes typewriter and purporting to be issued by the Remington-Sholes Company? A. *I believe I saw it once;* I cannot remember what publication it was in, or when.

xQ. 193. *I presume that during the course of your employment by the Remington-Sholes Company you made that statement more or less frequently to persons who were looking at the Remington-Sholes machine or examining it with a view to purchase; is such the fact?* A. *I have.*

xQ. 194. And have you ever made the statement to purchasers or intending purchasers in substance or in effect that it was the *second generation* of typewriter builders by the name Remington? A. No, sir; I have not; *I have called it second generation typewriter.*

xQ. 195. You say in your testimony that you did tell the so-called Mr. Francis (Crean) that *the Rem-Sho machine was the only typewriter on the market now made by a Remington; is that so?* A. *I did.*

xQ. 196. Then you regarded it, I suppose, *as a Remington make of machine;* is that so? A. *I regarded it as being made by F. Remington.*

xQ. 197. Well, that would make it a Remington make, would it not? A. Only so far as F. Remington is connected with the Remington-Sholes Company.

xQ. 198. You have said you regarded it as being made by F. Remington. *Now did you regard it as a Remington make of machine?* A. I said that the statement "the only machine now made by a Remington" referred to F. Remington of the Remington-Sholes Company, I regarded it as being made by a Remington.

xQ. 199. *Well, did you regard it as an F. Remington make of machine?* A. *No, sir, I did not.*

xQ. 200. *Why not?* A. *Because it was made by the Remington-Sholes Company of Chicago.*

xQ. 201. *Why then did you say that it was the only machine now manufactured by a Remington?* A. *I took the statement from the Rem-Sho catalogue.*

xQ. 202. But nevertheless you mean to say now, as you said in a previous answer, *that you regarded it as being made by a Remington; is not that so?* A. *It is.*

**xQ. 203. And I ask you again whether you did not also regard it as a Remington make? A. I regarded it as being made by a Remington. I presume that would make it a Remington make.**

R., 1197-1199.

The above quoted excerpts, from the testimony of the witness Sholes, show that the Howe Scale Co. and the Remington-Sholes Company and their agents and dealers represented to *prospective* purchasers *that the so-called Remington-Sholes or Rem-Sho typewriter, was the only machine made by a Remington and they meant thereby that it was a Remington make or in other words a "Remington" machine.* It is true that the witness says, in *one*

answer, that he regarded the machine as being made by Franklin Remington, and hence that it was being made by a Remington. *But when he was asked whether or no he regarded the machine as a Franklin Remington make of machine, he said he did not, because it was made by the Remington-Sholes Company of Chicago.* It stands out clearly in the proofs, in this case, that the machines manufactured by the Remington-Sholes Company and sold by the defendants and their agents were made by the Remington-Sholes Company, a *corporation, and not by Franklin Remington;* that is to say, by an *artificial* person, an entirely distinct entity from Franklin Remington, one of its incorporators and employees. The statement that the Remington-Sholes machine was made by a Remington was manifestly untrue, and showed an *intent* on the part of the appellant and its principal, and their agents and dealers, *to pervert the facts* and avail of the reputation associated with that name. **This is further proven by the fact that they nowhere asserted that their machine was the only one made by a Sholes or by a Fay.** They knew that the names "Sholes" and "Fay" had no repute in the market, or among purchasers or users of typewriters, but that the name "Remington" was a potent one, or as the Remington-Sholes Company had styled it in one of its advertisements **"this great name."** It will hereafter appear that the *purpose* of this statement and representation, and others of similar import, was *to artfully instill into the mind of the public the idea that the Remington-Sholes machine was the only genuine Remington typewriter*, and that the machine manufactured and sold by appellee was not a *genuine* "Remington" machine.

This fact is emphasized and made clear in an affidavit or statement of **Franklin Remington**, which was published in a Russian newspaper at Moscow in November, 1899, and which is admitted to be a correct version of Remington's affidavit, except in one particular (R., pp. 661, 983). In another

advertisement of this man, Hagan, whom *Franklin Remington declared was the only authorized agent for the sale of the Remington Sholes machine in the whole of Russia*, said machines were referred to as "*These genuine 'Remingtons' made by Remington-Sholes.*"

R., p. 986.

From the foregoing reference to Sholes' testimony, it is perfectly clear that he represented to Crean, as he did to others, *that the Remington Sholes typewriter was the only genuine Remington machine, or Remington make of machine, on the market, and also that he was trading upon the repute of the name Remington.*

Crean was corroborated by Miss Danaher.

R., pp. 257, 258.

(d). On the 19th of July, 1898, Crean visited Philadelphia, and at the Hotel Lafayette in that city had an interview with one **Wm. J. Romig,** who was then a salesman, in the employ of the appellant company, at its Philadelphia office. Romig came to the hotel in response to a telephonic message sent, by Mr. Crean, to the office of the Howe Scale Company. Romig stated to Crean, in substance, that the *Remington-Sholes* typewriter, which he was offering for sale, was *an improved Remington machine; that it was made by the former manufacturers of the old Remington, and was being handled through the Howe Scale Company by the Remington Sholes Company whose office was in Chicago.* Romig stated that the *Remington* machine was at present not manufactured by the Remington Company, but by Wyckoff, Seamans & Benedict, *and that his was really the Remington machine.* Crean suggested to him that there might be an opportunity for doing some business in Jamaica in the West Indies, and that the only machine known there was the Remington typewriter. Romig said that would certainly help his being able to do some business, *as his was the only machine outside of the old Remington which could be offered or*

*sold as a Remington machine.* He told Crean that the former Remington agents in Holland, South Africa and Australia had given up handling the old Remington in order to handle the *improved Remington;* that an order, placed by the Department of Justice at Washington for thirty machines, had been awarded to the Howe Scale Company for Remington-Sholes typewriters.

At the suggestion of Crean, Romig left the hotel to obtain a letter covering the details referred to in the conversation and returned in about an hour with **"Complainant's Exhibit Seddon-Romig letter, July 19, 1898."** (R. pp. 971, 972.) This letter covered certain portions of the conversation, *but omitted other parts thereof.* It was written on a typewriter by Romig, *and signed Remington Sholes Company, H. I. Seddon, Manager. The letter head bears the name of appellants.* On receipt of the letter, Crean suggested to Romig that one fact, which he had stated in their conversation, was not covered by the letter, to wit, that the Remington machine was not then being made by the Remington Company, *and that the Remington-Sholes was really the Remington machine.* Thereupon Romig said that he had intentionally omitted any reference to that point, for the reason that his company did not care to put a statement of that kind in writing. He said, however, *that the statement was entirely true and that they did not hesitate to make similar statements whenever the question was asked.* That if Crean insisted on it, he had no particular objection to making the statement in writing, and took the letter and wrote at the bottom of the second page thereof as follows: **"P. S. It might prove of interest to you to know that the Remington machine at present is not manufactured by the Remington Company, but by Messrs. Wyckoff, Seamans and Benedict, so that this is really the Remington machine."**

R., pp. 112–116.

Romig was called as a witness on behalf of the defendant-appellants, and his testimony will be found in R., pp. 1113–1144.

*He testified that from February, 1898, to August 1, of the same year, he was in the employ of the Howe Scale Company, 508 Market street, Philadelphia. His employment was that of a stenographer and salesman, and he was engaged in selling the Remington-Sholes typewriter for the appellant, who was at that time acting as general sales agent therefor.*

R., pp. 1113, 1114.

He further testified at considerable length concerning his interview with Crean at the Hotel Lafayette, in Philadelphia.

R., pp. 1115, 1116.

Whilst Romig denies that he made certain statements, attributed to him by Crean, *his lapses of recollection and want of memory*, in regard to certain matters, were so pronounced, that little, if any, reliance can be placed on his denials. *He claimed to have entirely forgotten that he had ever written or delivered, to Crean, the letter of July 19, 1898, "Complainant's Exhibit, Seddon-Romig letter."*

For example at pp. 1120, 1121 of Record, Romig's attention was called by appellant's counsel to this exhibit letter, and particularly to the *postscript* thereto, and he was asked whether or not he wrote such *postscript*, and, if so, to state fully the circumstances under which it was written. His reply to the question was: "I do not recall having given him a letter, so that I could not say anything about the postscript." *The Scale Co. has, however, admitted it to be a fact that the postscript was written by Romig.*

R., p. 926.

In cross-examination, at R., pp. 1129, 1130, Romig was unable to assign any reason for his failure or lapse of memory in respect to this letter or the contents thereof. Like Gillelan, Romig was

pre-eminently a "*non mi ricordo*" witness, insofar as "Complainant's Exhibit, Seddon-Romig letter" is concerned.

R., pp. 1134-1135.

Romig says that "It might also be possible, that I said to him (Crean), that *the Rem-Sho machine was the only one manufactured by a Remington*, meaning, of course, Mr. Frank Remington."

R., p. 1135.

In this connection it is to be noted that the *genuineness* of the letter, to wit, "Complainant's Exhibit, Seddon-Romig letter, is *undisputed*. Mr. H. I. Seddon signed the letter, *and if it were not genuine, he would have been called to testify to that fact.* Some of the statements testified to by Crean, as having been made by Romig, are embodied in this letter, as for example Romig's assertion that the former Remington agent in Holland had left the appellee, and had come into the Remington-Sholes camp; that the Remington agent in South Africa had ordered a quanity of their machines, and that they had recently been awarded the contract from the United States Government for Remington-Sholes typewriters, etc. As said above, *this exhibit letter bears the name of the Howe Scale Company, and Romig stated in cross-examination that at the time of his interview with Crean he represented that company.*

R., pp. 1123, 1124, 1125.

Undoubtedly Crean concealed from Romig his true name, etc., and that he was in respect of this matter acting in the capacity of a detective to find out just how appellants and their agents were representing the "Rem-Sho" machine in the sale thereof. But it is absurd to assert that Romig was *entrapped* into saying and doing that which it appears he and other agents had admittedly said and done before, with the knowledge and approval of their principals. Counsel's superlative criticism

of Crean is not of force as Crean's testimony in respect to his transactions with appellants office at Philadelphia, is fully corroborated by documentary and oral testimony. *The facts are beyond debate.*

(e) Shortly after the interview with Romig, and on the 16th of September, 1898, Crean visited *Camden*, N. J., and there met and had an interview with one **Walter M. Wilgus,** a salesman in the Philadelphia office of the Howe Scale Company.

R., pp. 114, 1337.

Crean testified that he showed Wilgus the letter, which Romig had previously given him, and that after Wilgus read it he stated that he knew of such a letter having been written, and that it was alright, *and that he would be glad to carry out the terms of the letter and sell him a machine.*

Wilgus spent some time with Crean talking over, in a general way, the Remington-Sholes typewriter. Crean says that in conversation Wilgus repeated, practically *the same statements that Romig had made in respect to the "Rem-Sho" being, really, the Remington machine, and as to its having been manufactured and invented by the former manufacturers and inventors of the Remington typewriter.* Before the termination of the interview, Crean asked Wilgus to give him some printed matter relating to the Remington-Sholes machine. Crean asked him if he did not have something in the way of *printed* matter covering the *mechanical* features of his machine, that is covering such points as a *salesman* should be posted about in talking the machine to *prospective* customers. Wilgus replied that *he had his private letter of instructions*, which he did not object to showing Crean, although it was intended only for the use of their salesmen. He thereupon handed Crean a typewritten paper covering nine pages, and turning to the 9th page he called Crean's attention particularly to the following paragraph: "Escapement

of our machine is nothing more than the escapement of the old Remington machine," and **"The machine has now been fully explained and it remains with the salesman to add such other interesting facts, such as the history of the company, the connection of our Mr. Remington with this machine and the relation to the old Remington Standard, the fact that this is a second generation of typewriter builders, and that the same standard of excellence is being maintained in the manufacture of this machine as all other goods which have been produced by the Remingtons."**

These instructions to salesmen were *admitted* by Howe Scale Co. and the Remington Sholes Company, to have been circulated among their *agents and dealers* for the purpose of giving *instructions* to them in regard to the "Remington-Sholes" typewriter.

R., pp. 1005, 1142, 1143.

Wilgus admitted that "Complainant's Exhibit Instructions to agents by the Howe Scale Company," headed **"Facts to bear in Mind,"** looked like those given to Crean by him at the time of the conversation in Camden. *He said it was matter for the instruction to salesmen; and that he received it from Mr. Seddon, manager of the typewriter department in the Howe Scale Company's office at Philadelphia.* He also testified that *he followed the instructions and used them* whenever the question was asked in regard to the *name* of the company.

R., pp. 1346, 1347, 1072, 1073.

In these "Facts to bear in Mind," the *salesman* is instructed to "make a point to see some *prospective customer* every day. Bear in mind the value of friendship and 'pull.' * * * *In other words leave no stone unturned.*" With these "General points in mind," it is clearly manifest that the *salesman, in his zeal to sell* the so-called Remington-Sholes machine, would not be at all

modest in his statements in respect to "*the connection of our Mr. Remington with this machine and the relation to the old Remington Standard.*" As already shown, "our Mr. Remington" *was never in the typewriter business, and possessed no skill therein before he bestowed his name on the Remington-Sholes Typewriter Co., and had no relation to the old Remington Standard,* except that his father was once a stockholder and an officer of E. Remington & Sons, *which connection ceased in 1882.* The above quotation, if it has any meaning at all, implies that the Remington-Sholes Company, so-called, was the *successor* in business of the old concern, E. Remington & Sons, *and was then carrying on such business, and as successor, and the same standard of excellence was being maintained in the manufacture of the Remington-Sholes machine, as of all other goods which had been produced by the Remingtons.* Such statements as those lodged in the minds of *salesmen*, who were told to "*leave no stone unturned*," were well calculated to bear fruit, and to cause them to make statements calculated to injure the *good-will* of appellee's business, and to cause the public to believe that the machine manufactured by Remington-Sholes Co. was "a *Remington*" typewriter, or an *improved* Remington machine. There certainly was no basis for the representation that Franklin Remington ever had any *connection* with "the old Remington Standard typewriter," or that the Remington-Sholes Company was the "*second generation* of typewriter builders," *or that it was maintaining the same standard of excellence in the construction of the Remington-Sholes typewriter as had been maintained by the Remingtons, that is E. Remington & Sons,* when they manufactured the "Remington" typewriter. The "standard of excellence" was and is maintained by appellee. *The above quoted excerpt furnishes clear proof of an intent on the part of the appellants to surreptitiously obtain the benefit of the great reputation which had long been associated with the writing machine and business of which appellee was and is the sole successor.*

At the time Crean visited *Camden*, he purchased a Remington-Sholes machine of Wilgus for the sum of $62.50, and an invoice of the machine was sent from the Howe Scale Company and delivered to him. This invoice will be found (R., p. 884). *It was receipted, Howe Scale Co. by Wilgus.* The name *Remington* in this invoice appears in quotation marks, and the machine is said to be of "**the style Remington.**" After the transaction was completed, Crean brought the machine to New York City, and it was, subsequently, delivered to appellee, and is now an exhibit in this case.

R., pp. 116, 117.

Another invoice is in evidence in this case bearing date July 29, 1898 (R., p. 833), which Crean testified he received in New York on the 30th day of July, 1898, and that it was in the same condition when introduced in evidence as when received, with the exception of the pencil memorandum thereon.

R., pp. 136, 137.

It will be noted that *this invoice refers to the Remington-Sholes Typewriter as "of the style Remington."*

These invoices also furnish evidence showing that appellants were offering the Remington Sholes typewriter *as a Remington machine, or a species thereof.*

As above said, in obtaining this testimony on behalf of the appellee, Crean was, undoubtedly, acting as a detective, but that does not displace his evidence, when, as in this case, his testimony is, *to a large extent, corroborated* by the evidence of other witnesses, by admissions of appellants and by documentary evidence, which has not been disputed by the appellant. In **Lever Bros., Ld.**, *v.* **Pasfield,** 88 Fed. Rep., 484, the Court held that proof of a single sale, though made to *complainant's detective*, might, in connection with other proofs, be sufficient to justify an injunction.

To the same effect DeFlorez *v.* Reynolds, 14 Blatch., 505; Fed. Cas., No. 3742. Saw v. Hart 90 NY. 457

In the case at bar there are other proofs besides the evidence of Crean, and corroborative thereof. The cases cited in the Court below in respect of the unreliability of detectives' testimony are not of force here, because the facts and circumstance were different, and there was no *corroborative* proof in those cases.

In this connection it is to be noted that it is not pretended or claimed that *Crean* was misled, but it is contended that the evidence obtained by him shows an *intent* on the part of appellants, their agents and dealers, to pirate the good-will of appellee's business and to sell their machines as and for *Remington* typewriters. Also that such statements, when made by agents and dealers to prospective purchasers, were likely to mislead and deceive them.

(f). Appellants' witness, **Baldwin,** *admitted that he had seen in the Remington-Sholes Company's catalogues the statement that the Remington-Sholes typewriter was "the only machine manufactured today by a Remington."*

R., pp. 1037, 1038.

He says he made that statement, *in instructing dealers and agents in their duties, because he saw it in the catalogues and supposed he was at liberty to talk what was printed.*

R., p. 1038.

Baldwin testified concerning inquiries being made of him by *prospective* purchasers, dealers and agents, as to what *connection* the Remington-Sholes Company had with the Remington typewriter; and among other things he was interrogated and answered as follows:

xQ. 189. And in that connection did you sometimes tell these people that the Remington-Sholes typewriter, or Rem-Sho typewriter was "the only

typewriter made by a Remington?" A. No, sir; I never told anyone anything of that kind. *I have told them, as stated before, that the Rem-Sho typewriter was the only machine now made by a Remington.*

**xQ. 199. What was your object in telling prospective buyers or dealers or agents that? A. My object then and now and always has been to get business, the same as any other salesman.**

R., p. 1043.

It already appears from the evidence of appellant's witness, Sholes, *that this representation in the catalogue, etc., meant a Remington make of machine,* and we here have the *admission* of appellant's witness and general organizer *that his object in making this statement was and always has been "to get business."* In other words, by representing it as a *Remington make,* the appellants were enabled "*to get business,*" *and make sales to purchasers of the Remington-Sholes machine, which it otherwise would not have made, and was thereby enabled to displace appellee's machines.*

R., p. 1043.

(g). Appellants' witness, **Hatch,** admitted that he had seen the statement that it was "*the only machine now made by a Remington,*" in the *catalogues* of the Remington-Sholes Company.

R., pp. 1050, 1069.

(h). **J. Franklyn Hobbs** stated that *he had distributed catalogues of the Remington-Sholes Company* containing the statement that the Remington-Sholes machine was "the only machine now made by a Remington."

R., pp. 1098, 1099.

## APPELLANTS' CATALOGUE.

In "Complainant's Exhibit Rem Sho Booklet," *on the back side of the title page and opposite to a cut of the "Remington-Sholes Company Factory" appear the words, "the only machine now made by a Remington."* These words are arranged about the center of the page, no other printed matter appearing thereon. It is intended that the *prospective* purchaser shall see those words directly he opens the catalogue. The same words are found in the same location in "Complainant's Exhibit Remington - Sholes - McGurrin catalogue."

## SCIENTIFIC AMERICAN.

In this connection, "Complainant's Exhibit Rem-Sho advertisement in Export Edition of the Scientific American" is both pertinent and illuminative. We here re-produce said exhibit.

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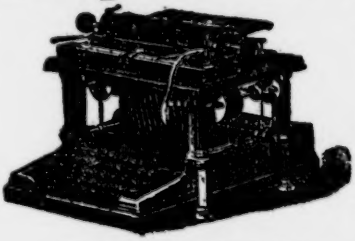
# Máquina de Escribir Rem-Sho.



Fabricado y de Venta por

**THE REMINGTON-SHOLES CO.**

CHICAGO, ILL., U. S. A.

La única máquina de escribir fabricada hoy por uno de la familia **REMINGTON.** Es fuerte y exacta, y digna de confianza, representando la segunda generación de fabricantes de máquinas de escribir que llevan este nombre célebre.

**Queremos agentes por todo el mundo.**

**Pídanse cátalogos ilustrados.**

# REM-SHO TYPEWRITER.

The only typewriter manufactured to-day by a **REMINGTON.** Strong, reliable, and accurate, it represents the **SECOND GENERATION** of typewriter manufacturers bearing this great name.

**AGENTS WANTED THROUGHOUT THE WORLD.**

**SEND FOR ILLUSTRATED CATALOGUE.**

Manufactured and sold by

**THE REMINGTON-SHOLES CO.**

**Of CHICAGO, ILL., U. S. A.**

---

WOLF TIDNER PENSSELAER

R., p. 973.

This newspaper is shown to have been published in the City of New York by Munn & Co., and to have been circulated both in the United States and in foreign countries where the English and Spanish languages are used commercially.

R., p. 226, 227.

**Said publication is admitted to have been prepared, inserted and paid for by the Remington-Sholes Company.** It appeared in several monthly editions, and among others, the January, February, March and April editions of the year 1899.

R., p. 227.

It will be observed that this publication refers to the "Rem-Sho" typewriter as **"the only typewriter manufactured to-day by a Remington. Strong, reliable and accurate. It represents the second generation of typewriter manufacturers bearing this great name."** The attention of the Court is called to the fact that in the above quoted excerpt the words **"Remington"** and **"Second generation"** are printed in *capitals and bolder type* than the other words in the paragraph quoted. *This advertisement shows an intent to represent to the public the so-called "Rem-Sho" typewriter, or "Remington-Sholes" typewriter as a second generation Remington typewriter*, that is to say, the Remington-Sholes Company is alleged to be the **second generation** of typewriter manufacturers bearing **"this great name — Remington."** It is "this great name" — "Remington"—and the association of the Remington-Sholes Company and its product therewith, to which the attention of the public was called *in capital letters and in type much bolder and more conspicuous than the other words in the paragraph.* This paragraph clearly conveys the idea that *E. Remington & Sons* were the *first* generation of typewriter builders, and that the *Remington-Sholes Company* was the *second* generation of typewriter manufacturers bearing the

name of "**Remington.**" It needs no argument to show that *this advertisement discloses an intent to trade upon the reputation of the name "Remington," and to pirate the good-will of appellee's business.*

In the court below, counsel for appellants contended that the statement in appellants' catalogue, etc., that the Remington-Sholes was the only machine then made by a Remington was true inasmuch as Franklin Remington was general manager of the Remington-Sholes Company. That this statement was *untrue* is clearly shown by appellants' catalogues, advertisements, signs, etc., in all of which it is stated that the machines are manufactured by the Remington-Sholes Company. Moreover, Franklin Remington did not superintend the manufactnre of the Remington Sholes or Rem-Sho machines, and possessed no practical knowledge of or skill in typewriter manufacture. This branch of the business was looked after by Sholes, Hochklassen and Fay. Franklin Remington was *advertised* as general manager, but most of his time was spent in visiting agents and dealers in this country and in Europe and aiding them in their efforts to sell the so-called Remington-Sholes typewriter.

Of the 3,000 shares of the capital stock of the Remington-Sholes Company he held only 150 shares, given him by Fay.

In no *truthful* sense could it be said that Remington manufactured the machines. This, however, was not the only untruthful statement by the Remington-Sholes Company in connection with their machine and business, for they also said that the Remington-Sholes Company was the "second generation" of typewriter builders under the name of "Remington," and in their instructions to salesmen they asserted that "the same standard of excellence" was being maintained in the manufacture of the Remington-Sholes machine as all other goods which had been produced by the Remingtons.

These statements and representations clearly implied that the Remington-Sholes Company was the

*successor* or a branch of the old concern, and that its machine was *the genuine* "Remington typewriter." Obviously those assertions and representations were *untrue*. It is therefore manifest that the contention of counsel for the appellants that a defendant may not be enjoined against telling the truth are not of force in the case at bar.

Beyond question the term or name "Remington" means a writing machine made by complainant-appellee or its predecessors at the old establishment, and having a certain standard of excellence in quality and action. The defendants-appellants ignore the distinction between using the name Remington as the surname of a person connected with their business, and using it as the name of complainant-appellee's machines and business. Appellants are not entitled to use the name Remington in its secondary sense and thereby state a falsehood.

The purpose and intent of these statements were not to obtain the benefit of the reputation of Franklin Remington, *but to gain the enlarged reputation which had for many years belonged to the Remington typewriter, and to the old business of which appellee was and is the lawful successor. Their object was not to tell the truth but to make the public believe that the "Remington-Sholes" or "Rem-Sho" machine was the genuine Remington typewriter.*

## PHILADELPHIA EXPOSITION.

In December, 1899, an Exposition was held in the City of Philadelphia under the auspices of the Commercial Museums and Franklin Institute, known as the National Export Exposition. At that Exposition typewriters were exhibited, and, among others, the Remington-Sholes Company exhibited its writing machine. Mr. John F. Soby, who attended the Exposition, testified that there was a *sign which attracted his attention*, placed on a type-

writer, that was being exhibited in front of the Remington-Sholes Company's booth, and the wording of this sign was as follows: "*Two generations of typewriters.* This machine was invented by C. Latham Sholes of Milwaukee in the early 60's. *Later manufactured by E. Remington & Sons, Ilion, N. Y. It is the original article itself.* The Rem-Sho Typewriter was brought out by Zalmon G. Sholes, the son of the inventor, *and Franklin Remington, the son of the manufacturer of this machine.* An instance of the familiar adage that 'History repeats itself.' "

R., pp. 498, 499.

Appellants' witness, Frank L. Sholes, testified concerning the signs of the Remington-Sholes Company and said, among other things, *that there was a white card sign lettered:* **"Our foreign agencies," and then were given the different cities in Europe and the balance of the world outside of the United States in which the Remington-Sholes Company had offices;** and there was a small card sign marked "History repeats itself." Sholes says the latter sign was in substance, *that the Rem-Sho machine was invented by the sons of the original inventor and manufacturer of this machine,* meaning an old Sholes & Glidden typewriter, manufactured by the Western Electric Company of Chicago, Ill., upon which said sign was displayed.

R., pp. 1172, 1173.

The witness was unable to give the exact wording of the sign on the Sholes & Glidden Machine. He said that it was one that was manufactured before E. Remington & Sons began the manufacture or sale of what was for a short while designated Sholes & Glidden typewriter. It was not exactly like the Sholes & Glidden, manufactured by E. Remington & Sons, but was substantially the same.

R., pp. 1189, 1190.

The sign was placed on the Sholes & Glidden typewriter, *manufactured by the Western Electric Company*, to attract attention to the Remington-Sholes exhibit, *and this particular machine had nothing to do with the Remington-Sholes machine*, or with any typewriter manufactured by the Remington-Sholes Company, except their family history; *thus admitting that this so-called Sholes & Glidden machine, which he displaped had no connection with E. Remington & Sons.*

He also stated that he desired to make known the connection of *Mr. Remington with his father's firm of E. Remington & Sons.* He put the sign up there to show that Z. G. Sholes' father had invented the Sholes & Glidden machine, *and that F. Remington's father had been the original manufacturer thereof.*

R., pp. 1191, 1201.

Such is the *lame excuse* given for the use of this sign and the association of the Remington-Sholes machine *with appellee's business and product.* The attention of the Court has already been called to the fact that *whatever of value as regards good-will or otherwise, was attached to the old Sholes & Glidden writing machine, belongs to appellee in virtue of the fact that it is the sole successor of the entire typewriter business which was formerly carried on by the corporation of E. Remington & Sons.* Sholes himself admits that the wording of the sign as testified to by Mr Soby, *whose evidence in this regard is uncontradicted*, **was not strictly true**; that is to say, if the sign read, "This machine, etc." He admitted that the words as quoted to him in xQ. 174, pp. 1193, 1194, of the Record, were substantially correct. This particular machine was manufactured by the Western Electric Company, *and he admits that the wording of the sign was, therefore, untrue.*

R., p. 1194.

If this machine was manufactured by the Western Electric Company, it had no connection with E.

Remington & Sons as manufacturers. But it is perfectly clear that the purpose and intent of the appellants' agent was *to associate and connect the Remington-Sholes machine, through the inventor and promoters thereof*, with E. Remington & Sons and appellee's product, known as the "Remington" typewriter. C. Latham Sholes was only one of several inventors of the *Sholes & Glidden* machine, as its name plainly implies, *and Franklin Remington's father was not the manufacturer of the Remington typewriter*, but was connected with the **corporation**, which manufactured what was for a short time known as the Sholes & Glidden typewriter.

**Misstatements of fact, i. e, half truths, under the circumstances disclosed in this case must be regarded as evidence tending to show fraudulent intent. An intent to trade upon the reputation of another and calculated to confuse and mislead the public and render complainant's good will precarious. They showed an intent to trade unfairly with appellee.**

## PETMECKY ADVERTISEMENTS.

On the 11th day of March, 1899, an advertisement and notice of the Remington Sholes typewriter appeared in the *Austin Daily Tribune*, and on the next day, to wit, March 12, 1899, the same advertisement or notice appeared in the *Austin Daily Statesman*. This advertisement was, undoubtedly, inserted by one Fred Petmecky of Austin, Texas. *Petmecky was appointed a dealer by appellants' witness, Baldwin, who said that at the time these advertisements were inserted he thought that Petmecky was a dealer for the Remington-Sholes Company, and had a Remington-Sholes machine in his possession.*

Baldwin stated that he imparted information to Petmecky about the machine, and left catalogues with him at the time he appointed him a dealer. Baldwin's attention being called to the catalogues

containing the statement "the only machine now made by a Remington," was unable to say whether or no he left such catalogues with Petmecky, but as heretofore pointed out, he testified, that he frequently made that statement to dealers and agents, and it is, therefore, plain that Petmecky obtained his information, in that regard, either from Baldwin or the catalogues left with him.

R., pp. 1028, 1029.

In those *advertisements and notices* appeared the statement contained in the *catalogues*, etc., that "*the only machine now made by a Remington is the new Remington-Sholes typewriter.*" These advertisements show that the same seeds had been sown and taken root in Austin as in other places, *and that emphasis was placed upon the alleged fact that the Remington-Sholes machine was the only one made by a Remington, and was the product of "the brain of the cunning Remington.*" The manifest intent in this case was, as in many other connections, to instill into the minds of the public the idea that this so-called Rem-Sho" machine was the only *genuine* Remington typewriter on the market.

R., pp. 908, 909, pp. 380, 381.

## PHONETIC JOURNAL.

That these statements of appellants, above quoted, were extensively circulated and scattered over the world is made manifest by reference to complainant's exhibit, Phonetic Journal of Nov. 12, 1898. (R., p. 887.) The Phonetic Journal is published in England and circulated largely in Great Britain and Ireland and in the British colonies, *and to some extent in the United States and elsewhere.*

R., pp. 229, 230.

In this advertisement, which appears over the name of Remington-Sholes Company of 28 Basinghall street, London, E. C., will be found the state-

ment, concerning the Remington-Sholes typewriter, that "*It is the only typewriter manufactured by a member of the well-known Remington family, the original manufacturers of the Remington Standard typewriter.*" * * *

## SYNDICATE PROSPECTUS.

In "Complainant's Exhibit Remington-Sholes Syndicate Prospectus" (R., pp. 903, 906), it is stated that the Rem-Sho machine embodies the latest and best improvements known in typewriting machines, *representing, as he (Franklin Remington) does, the second generation of the family in the business—his father being the original maker of the Remington Standard Typewriter.*"

It was admitted by appellants' counsel that the Franklyn Remington referred to in this prospectus was the same Franklin Remington who was then connected with the Remington-Sholes Company, and that the statement therein, that he would join the Board after allotment, *was put into said prospectus with his consent and approval.*

R., p. 457.

## CARCABA'S ADVERTISEMENT.

In January and February, 1899, one William Carcaba, who was appointed a dealer by Page, Dennis & Co., or the defendant company, and afterwards continued as dealer by the Remington-Sholes Company, inserted an advertisement in the St. Augustine Daily Herald, a newspaper published and circulated at St. Augustine, Fla.

R., pp. 192–196, 1353–1355.

A copy of said exhibit will be found in R., p. 979, and is here reproduced.

**Re-mem-ber THE name.**

**The Remington-Sholes Standard Typewriter.**

Built for durability, speed, manifolding and permanent allignment. Combining the leading features of the principle high grade machines, and adopted by the present World's Champion, C. H. M'Gurrin.

IT'S USE IS IT'S PROOF.

**Write for Catalogue.**

*WM. CARCABA. AGENT*
St. Augustine Fla.

Page 327, C. Ex.

It is also admitted that the *electrotypes* for the illustration of the typewriting machine appearing in the advertisement, in said St. Augustine Daily Herald, *were furnished to him by the Remington-Sholes Company on the first day of November, 1898.*

The appellants' machine, in the advertisement of Carcaba, is designated as "**The Remington-Sholes Standard Typewriter,**" and is signed "**Wm. Carcaba, Agt., St. Augustine, Fla.**" This advertise-

ment, in very large capital letters, cautions the public to **"Remember the name."** Appellee's witness, Brooks, interviewed Carcaba at his place of business in St. Augustine, Fla., who informed him that he was selling the Rem-Sho typewriter, which was *an improved Remington machine*, invented by the son of the inventor of the Remington typewriter, who had associated with him Mr. Sholes of Chicago.

R., p. 195.

It appears that Carcaba's advertisement was called to the attention of Mr. Fay, the president of appellant's principal, *by one Seddon*, and that on or about the 26th of February, 1899, Fay wrote to Carcaba, and among other things said: "Our Mr. Seddon, who has just visited St. Augustine, sends me a copy of an advertisement, which you have printed in one of the St. Augustine papers, in which after the words 'Remember the name,' you give it as follows: 'The Remington-Sholes Standard Typewriter.' **Now, this is not the name of our machine.** * * * The name of our company, which appears upon the cross bar in front of the machine, is the 'Remington-Sholes Company.' **The use of the word 'Standard' in this advertisement is exceedingly objectionable to us, for the reason that it seems, when used in connection with our company name, to be calculated to confuse the buyer as to whether he is purchasing our machine or the well-known Remington Standard. Such use of the word 'Standard' is not only unfair, but extremely dangerous, as you are liable to be sued upon it at any time.** * * * A suit is already pending, brought by Wyckoff, Seamans & Benedict, against the Howe Scale Company, **raising this very point of deception of the public by one of our agents,** which we never intended, and have always guarded carefully against. **For your own protection as well as ours, we beg that you will make the correction promptly, and if you have sold any machines**

**or invoiced them as 'Remington-Sholes Standard Machines,' we beg that you will let us know the facts in detail, as they may be of vital importance in the suit now pending.**

*This letter is*, in substance and effect, *an admission by the President of Remington Sholes Company, that the advertisement of Carcaba was calculated to confuse the buyer of typewriters as to whether he was purchasing the Remington-Sholes or the well known Remington, or Remington Standard typewriter.*

It is an undoubted fact that Carcaba's advertisement was calculated to mislead the ordinary purchaser, *and it is a good illustration of what unscrupulous agents and dealers have done and would do, if appellants were permitted to use the trade-names of appellee.* Fay's sensitiveness in this instance, as disclosed by his letter, appears to be confined to the word "Standard," and while that word has been used, more or less, in connection with the appellee's machines and business, for a good many years, it does not constitute the salient or essential part of appellee's trade-name.

It has already been shown that *the essential part of appellee's trade-name is the word "Remington," which word has acquired a secondary distinctive meaning—a meaning that it designates the appellee's product and appellee's writing machines and business only.* It is a little singular that Fay should have been so *sensitive* in respect of the use of the word "*Standard*," by Carcaba, and yet *utterly obtuse and oblivious to the use of the word "Remington" by his company and their agents and dealers.* In its answer Howe Scale Co. alleges that appellee's machines have been commonly spoken of and referred to in trade parlance as the "Remington Standard," but *appellants abandoned that contention and practically conceded that appellee and its business were generally known as the "Remington Typewriter Company," and its product as the "Remington typewriter."* They proved in this case that the word "Standard" has no other force

or significance in the typewriter trade than that of indicating that a certain machine was of standard quality.

Appellants witness, Baldwin, said that "The commonly accepted meaning of the word 'Standard,' among typewriter salesmen and, also, among typewriter users throughout the country, was any machine of $100 value of a standard make." He said that if a man asked for a standard typewriter he only meant a machine of $100 value.

R., p. 1016.

In cross-examination Baldwin testified that the word "Standard" when used in connection with any typewriting machine, or in any advertisement of a typewriting machine, *did not indicate its origin, or point to any particular maker.*

R., pp. 1034, 1035.

When pressed however with the question whether or no the words "**Remington-Sholes Standard Typewriter**" were a proper designation of the "Remington-Sholes" or "Rem-Sho" machine, he said that he would not use those words in an advertisement of that machine, *because it was not the name thereof, and it might be construed as a misrepresentation, for the reason that the word "Standard" had been used in connection with the Remington machine manufactured by the appellee.*

R., pp. 1035, 1036.

In the end he appears to have reached the same conclusion as did *Fay*, viz., that the use of the words "Remington-Sholes Standard Typewriter" might be construed as a *misrepresentation*, but like Fay he ignored the far more important fact that in all cases the name "*Remington*" was used by the Remington-Sholes Co. in connection with its machines.

If the use of the word "Standard"—common in the trade—was calculated to mislead, *a fortiori* the employment of the name "Remington" by appellants which was and is understood in the trade and by the public in its *secondary* sense, would deceive the ordinary purchaser of writing machines.

As regards the force and significance of the word "Standard" in the typewriter trade, similar evidence to Baldwin's, was given by appellants' witness Hobbs.

R., pp. 1085–1089.

It, therefore, seems to be conceded by Fay and Baldwin that the use of the words "The Remington-Sholes Standard Typewriter" by Carcaba was calculated to confuse and mislead the public.

*Appellants' contention* that the intending purchaser, if he were confused by Carcaba's advertisement, would have been fully enlightened when he visited the Carcaba store is inadmissable, and not of force, when it is seen what this *unscrupulous dealer had done and was likely to do in the premises.*

## DIAMOND SUPPLY CO.

The attention of the Court is invited to another similar advertisement, which was inserted and published in the *St. Joseph Sunday Herald of date April 30, 1899*, a well-known newspaper published in St. Joseph, Mo., and circulated there and in that vicinity.

R., pp. 379, 380.

*This advertisement was prepared, paid for and inserted in said newspaper by the Diamond Supply Company of St. Joseph, Mo., which was at that date a local agent or dealer of the Remington-Sholes Co.*, and as such was selling or offering for sale the Remington-Sholes typewriter, at the time this advertisement was published. It is admitted that the machines, so offered for sale by the Diamond Supply Com-

pany, were manufactured by the Remington-Sholes Company of Chicago. A copy of said advertisement is here reproduced.

R., pp. 521, 522, 958.

and monopolies and to provide proced- | servative and clear-sighted majority


# REM-SHO

REMINGTON-SHOLES

## STANDARD TYPEWRITER

New Models, Nos. 4 and 5, $100 List. The finest Machines ever put on sale.

Call and examine, and test these new models.

EVERY MACHICE GUARANTEED

High-Class Goods

## DIAMOND SUPPLY CO.

Leading HIGH GRADE BICYCLES of America.
Repairing, Sundries, Renting.
319-321 North Third Street
St. Joseph, Mo.

A Machine

## Not in the Trust

WILL NOT COST YOU $100

As we make a VERY LIBERAL DISCOUNT FOR CASH.

A STANDARD HIGH-GRADE MACHINE

Guaranteed equal to the best. Remarkable for its Simplicity, Lightness of Touch, and small number of parts. Ball Bearing, automatically locked basket shift, permanent alignment, universal key board.

At A PRICE you have wished for.

It will be observed that in this advertisement the machine of Remington-Sholes Co. is designated.

**REM-SHO**
**REMINGTON-SHOLES**
**STANDARD TYPEWRITER.**

The advertisement refers to new models Nos. 4 and 5, contains a cut of the machine, and states that the machine is guaranteed. In several respects it is similar to the advertisement of complainant-appellee, in the same paper, a reproduction of which will be found in R., p. 959.

This advertisement, like Carcaba's, designated the machine as the "Remington-Sholes Standard Typewriter," *and indicates that "Rem-Sho" was simply an abbreviated name.* The statements of Fay and Baldwin in respect to the Carcaba advertisement, and the comments hitherto made thereon, are equally pertinent to the advertisement of the Diamond Supply Company, published in the St. Joseph Sunday Herald.

"Defendant's Exhibit, Diamond Supply Company Contract," will be found in R., pp. 1456 1457, Under this contract the Diamond Supply Company was appointed a local dealer for the City of St. Joseph, Mo., and nearby adjacent territory. The Remington-Sholes Company agreed to fill orders for machines sent in by "Diamond," if properly signed by responsible customers, shipping on board cars from its office at Chicago, Ill.; to bill sales to customers at the prices agreed upon by "Diamond," and to allow "Diamond," as a commission on sales, the excess charged the customer over $60 for No. 2 and $62.50 for No. 3 Rem-Sho machines, and $2 50 for metal cover, with base board, when wanted. All commissions payable to "Diamond" promptly after payment of the customer's account to the Remington-Sholes Company, which was to make its own collections with the assistance of "Diamond." Ob-

viously this was a contract wherein and whereby the Diamond Supply Company was appointed a *local agent* for the Remington-Sholes Company, and received a commission from said company on all sales of its machines made by "Diamond." *It was not the contract of an independent dealer who purceased his machines outright. Hence, the advertisement of the agent, acting within the scope of its agency, was in substance and in effect the act of the principal, Remington-Sholes Company.*

Under the admissions of Fay and Baldwin, the "Diamond" advertisement was calculated to confuse and mislead the public and to injure the appellee's business; and it is ~~as~~ not material that the Diamond Supply Company sold no Remington-Sholes machines, in so far as injunctive relief is concerned. It offered for sale and endeavored to sell the so-called "Remington-Sholes Standard Typewriter," and published such advertisements *as were calculated to mislead ordinary purchasers.*

This advertisement shows that these agents of appellant's principal were unscrupulous and were resorting to unfair means to promote the sale of the Remington-Sholes machine.

## FOREIGN PUBLICATIONS AND ADVERTISEMENTS.

The attention of the Court is now called to sundry advertisements in foreign publications, etc., of dealers and agents who offered for sale the Remington-Sholes or Rem-Sho typewriter, *for the purpose of showing that Remington-Sholes Co. had put into the hands of such dealers and agents the means of deceiving the ultimate purchaser of writing machines.* We have hitherto pointed out that the Remington-Sholes Company, now Fay-Sholes Co., is the *real* defendant-appellant in this case, *and that the Howe Scale Company justifies its acts by that which it alleges to be the*

*right of the Remington-Sholes Company, and fully identifies itself with that company.* It is, therefore, relevant that the Court shall be advised not only as regards what appellants' agents and dealers may do in respect to confusing, misleading and deceiving the public by the use of the names "Remington" and "Remington Company," but also what they actually have done *in the premises.* This evidence is for the benefit of the Court, and to enable it to say whether or no the *ultimate* purchaser is likely to be mislead by the use of the name "Remington," etc., in connection with appellants' business and machines. It is familiar law to this Court that in this class of cases one who puts into the hands of retail dealers an article made by him and so dressed up as to enable such dealers to deceive the *ultimate* purchaser into the belief that he is purchasing the goods of a third person, may be enjoined by the latter.

In Lever *v.* Goodwin, 36 Ch. Div., 1, the Court says: "Now, it has been said more than once in this case, *the manufacturer ought not to be liable for the fraud of the ultimate seller*, that is, the shopkeeper or the shop-keeper's assistant. But that is not the true view of the case. The question is whether the defendants have or have not knowingly put into the hands of the retail dealers *the means of decciving the ultimate purchasers.*"

To the same effect

Johnson *v.* Orr-Ewing, App. Cas., 219 (1882).

N. K. Fairbank Co. *v.* R. W. Bell M'f'g Co., 77 Fed. Rep., 869, 878.

In Reddaway *v.* Banham (1896), App. Cas., 219, Lord Macnaghten said: "At Banham's works where it cannot mean Reddaway's belting, it may be construed to mean belting made of camel's hair; *abroad*, to the *German* manufacturer, to the Bombay mill-owner, to the up-country native, it must mean Reddaway's, it can mean nothing else."

These observations show that the House of Lords considered it pertinent to inquire whether or no the *ultimate foreign purchaser* was likely to be deceived.

The Remington-Sholes Company *advertised* the fact that it had "foreign agencies" and "branch offices" for the sale of its writing machines, as will be seen by reference to defendant's exhibit Remington-Sholes sign circular letter, R., p. 1448, and a catalogue of the Remington-Sholes Company, R., p. 1455. **By reference to the title-page of the catalogue it will be observed that said company had "branch offices" in London, Copenhagen, Rotterdam, Paris, Berlin, Leipsic, Moscow, Bombay and Vienna; and by reference to the letter above referred to, it will also be seen that it had branch offices in St. Petersburg, Russia, and Hamburg, Germany.**

Frank L. Sholes testified that at the Philadelphia Exposition said company displayed a sign consisting of a "white card sign lettered '*Our Foreign Agencies*,' and it gave *the different cities in Europe and elsewhere in which the Remington-Sholes Company maintained offices.*

R., p. 1172.

It also appears in the testimony of some of appellants' witnesses, and from exhibits which were introduced in evidence in the case at bar, that the Remington-Sholes Company established various agencies and dealerships in foreign countries, through which its machines were advertised for sale and sold.

**(1) In Complainant's Exhibit, Berlingske Political Advertising Tiding, dated March 20, 1899,** an advertisement of the so-called Remington-Sholes typewriter appeared, a reproduction of which will be found in R., p. 957. The translation of said advertisement will be found in R., p. 885, and reads as follows: "F. REMINGTON, Jun., manufactures the renowned Remington-Sholes Typewriter. The Office Inventory and Typewriter

Co." The attention of the Court is called to the prominence given, in the advertisement, to the name "Remington." R., pp. 464, 466.

**(2) "Complainant's Exhibit Remington Imperial Booklet and Translation"** will be found in R., pp. 962–966 and 888–891. This booklet or catalogue is printed in the Russian language, and was issued by an agent or dealer for the sale of the Remington-Sholes typewriter in St. Petersburg. It will be observed that in this booklet (see translation R., p. 888, *et seq.*) the **Remington-Sholes** machine is referred to as the **"Remington Imperial."** Among other *illuminative* statements in this publication, is the following: "The factory, 'Remington Standard,' does not belong to any of Remingtons and passed into new hands: Wyckoff, Seamans & Benedict long ago, at the time when F. Remington and Mr. Sholes, the inventor of all Remingtons, left the business and establishing a factory of their own, conducted the same on as solid basis as before. * * * When the principal inventor, Sholes, left 'Remington Standard business,' the last hope for further improvement of this typewriting machine was gone. * * * The latest model brought out this year is the *Remington Imperial.*"

It will be seen that this Russian agent or dealer was trading on the name *Remington* and had dropped the name "Sholes," which forms no part of his designation of the so-called "Rem-Sho" tppewriter.

*It is scarcely necessary to say that this booklet is replete with untruths.*

On the back cover thereof (R., p. 966) it will be seen that there is a simulation of one of appellee's trade-marks, to wit, a seal bearing certain words, and the representation of a writing machine, *thus showing an intent to imitate appellee's seal trade-mark.*

**(3) In Complainant's Exhibit St. Petersburg Gazette,** is an advertisement, dated Dec. 14, 1899.

originating from the same source as the one last above mentioned. *The Remington-Sholes machine is therein designated as the "Remington Imperial"*

R., pp. 891, 967, 502–507.

**(4) Complainant's Exhibit Novoe Vremya advertisement** will be found in R., pp. 893, 894, 968, 502–507. *The Remington-Sholes typewriter is there designated as the "Remington Imperial,"* and is said to be manufactured by F. Remington and Z. Sholes of Chicago. *It is also stated that the representative for the whole of Russia is I. J. Hagen of Moscow.*

**(5) Complainant's Exhibit Office Inventory and Typewriter Company, Limited, advertisement,** is an illuminative one, and clearly shows that this concern was trading on the name "Remington," and endeavoring to appropriate the good will associated with that name. This advertisement will be found in R., pp. 896, 899 and 974, 978. In the opening paragraph of this circular, issued by the Office Inventory and Typewriter Company, Limited, of Copenhagen, Denmark, the authors say: "We herewith beg to hand you *our prospectus of the Remington typewriter sold by us and called Remington-Sholes Chicago.* These machines are invented by the young Mr. F. Remington and Mr. Sholes conjointly, and are a considerable improvement upon ~~the~~ the pale of the older systems." * * * "Remington-Sholes, Vini; Vidi; Vici; **new model 'Remington.'** Most solid construction." Obviously this concern here represents the Remington-Sholes typewriter to be *the Remington typewriter*, and the machine which it is selling *as a new model Remington.*

R., pp. 896–899, 654.

**(6) In Complainant's Exhibit Newald-Kondrup letter and envelope** (R. pp. 969–970), the court will note the fact that the name Remington is more conspicuously printed than any other

word in said letter, and that on the envelope a list of *foreign* offices is given where the Remington-Sholes machines are sold.

R., p. 655.

(7) **Complainant's Exhibit, Every Eighth Day,** a newspaper published at Copenhagen, Dec. 25, 1899, contains a picture of Mr. Franklin Remington, which is referred to therein as follows: "We reproduce here a photograph of one of the most known typewriter inventors, *Mr. Remington, who has recently paid a visit to Copenhagen in order further to work for the use of his machine in this capital, where he is represented by the New Limited Company, 'The Office Inventory and Typewriter Company,'*" which is the same concern whose circular is above referred to. It appears from this publication that Mr. Franklin Remington, the so-called manager of the Remington-Sholes Company, had paid a visit to Copenhagen and had aided and assisted the Office Inventory and Typewriter Company in the sale of the Remington-Sholes machines which they designated as **"Remington typewriters," and "New Model Remington."**

R., pp. 464–466, 907.

(8) **Complainant's Exhibit, Wyckoff, Seamans & Benedict, advertisement Nos. 1 and 2, R., p. 961,** shows and illustrates the method of advertising then employed by complainants, both in this country and in foreign countries, in the sale of its machines. On pages 882 and 960, will be found a Russian advertisement of the Remington-Sholes typewriter, which was clearly intended to simulate the advertisements of appellee above referred to.

R., pp. 655–656, 364, 375, 376.

(9) **Complainant's Exhibit, Russian Newspaper No. 338,** contains an advertisement inserted therein by T. I. Hagen, of Moscow. The original will be found in R., p. 984, and a translation thereof on p.

983. It is stipulated (R., pp. 660–661) that this advertisement was published in said paper at Moscow, Russia, on the 10th day of December, 1899; that it was circulated at Moscow, Russia; that the advertisement was inserted or caused to be inserted therein, and paid for by Hagen; that the translation of said advertisement is a correct one; that Hagan at the time of said publication had the exclusive right for the sale in Russia of "Rem-Sho" or "Remington-Sholes" typewriters; that the machines so sold, or offered for sale, were manufactured by Remington-Sholes Co.; **that said advertisement was prepared by Hagen from an affidavit made by Franklin Remington before the American Consul at Moscow, Russia;** that the affidavit of said Remington was made for the purpose of publication by said Hagen, and the same is conceded to be correct in all respects except as to the first paragraph, which it is alleged should have read, "1. That I am the son of the original manufacturer of the Remington typewriter;" whereas in the notice or advertisement inserted in said newspaper it reads, "That I am the son of the original *inventor and manufacturer* of the 'Remington' typewriter." The only difference being that appellants allege that Remington did not state in his affidavit that he was the son of the original *inventor*, etc. *Admitting this to be true, it only goes to show that this dealer did not hesitate to make any statement that would aid him in selling the "Remington-Sholes" machine as and for a Remington.* The stipulation and this advertisement plainly show that **Franklin Remington,** the so-called manager of Remington-Sholes Co., was in **Russia** and there made this affidavit for the purpose of publication by **Hagen,** and to aid Hagen in his unlawful design of selling the "Remington-Sholes" typewriter as and for what he designated in his advertisement as the **"Remington Imperial,"** which simply meant that the machine was a **"Remington"** of the highest quality or class.

Referring to the translation of this advertisement (p. 983), the Court will observe that Remington stated in his affidavit that "On my arrival in Moscow from America, I was informed that various false reports respecting my typewriters are being spread by unfair competitors. *I hereby declare that I have given official testimony to the American Consul, as follows:* 1. That I am the son of the original (inventor and) manufacturer of the Remington typewriter; 2. That I am the only descendant of Remington at the present time engaged in the manufacture of typewriters; 3. *That all other machines bearing the name 'Remington' are made and sold by other parties, who exclusively, in the interest of their own material advantage, make use of the name 'Remington';* 4. That my machines, manufactured in Chicago, are known here by the name of '*Remington-Sholes*,' * * *; 5. That the only authorized agent for the sale of the *Remington-Sholes*, in the whole of Russia, is T. I. Hagen * * * **General Manager of the Remington-Sholes Co., signed Franklin Remington.**" As above said, it is conceded that this is a *correct* copy of Franklin Remington's affidavit, made before the United States Consul at Moscow, to aid Hagen in the sale of that which Remington calls "my typewriters." This affidavit of Remington, which was published by Hagen, *contains the usual misstatements of fact*, and was well calculated to injure the good-will of complainant's business, and aid Hagen in selling "my machines" as and for the "Remington" typewriter. As heretofore pointed out, Franklin Remington's father was never the manufacturer of any typewriter. Franklin Remington was not then *personally* engaged and never had been so engaged in the manufacture of writing machines.

His statement, in the *third* paragraph, that all other machines bearing the name "Remington," except his, were made and sold and so designated by parties—meaning appellee—in the interest of their own material advantage, was calculated to

produce in the mind of the public the belief that the appellee had no *lawful* right to use the name "Remington" in connection with its product, *and that the only genuine Remington typewriter was the Remington-Sholes machine, or what Remington's co-conspirator, Hagen, designated the "Remington Imperial."* It is perfectly plain that **Franklin Remington** made his affidavit in Russia, *and was there as the representative of the Remington-Sholes Co.* to aid and abet Hagen in his *fraudulent* scheme to divert from appellee the good-will associated with the name "Remington, which had long been a designation for appellee's machines and business.

(10) "**Complainant's Exhibit Russian News of the Day**" is another choice advertisement of this man **Hagen.** It will be found in R., p. 987, and a translation thereof at p. 986. It was stipulated by the defendants-appellants that the publication known as "Russian News of the Day" was published at Moscow, Russia, at the date of said copy; that the advertisement of the Remington-Sholes typewriting machine was inserted or caused to be inserted therein and paid for by **T. I. Hagen of Moscow**; that the translation annexed to said newspaper is a true and correct translation of said advertisement and that Hagen had at the time of said publication the exclusive right for the sale in Russia of the Remington-Sholes writing machine, manufactured by the Remington-Sholes Company of Chicago.

R., pp., 661, 662.

This advertisement of the "Remington-Sholes" reads as follows: "The 'Remington-Sholes typewriters' which are sold in my store and by my agents are genuine and not imitations, *Surpassing in merit all machines bearing the name Remington in consequence of their improved construction, and that the inventors of these machines, S. Sholes and Franklin Remington, are both the sons of the de-*

*ceased manufacturers of the Remington Standard and 'Special.'*

**"These genuine 'Remingtons,'** *made by* **Remington-Sholes,** *are sold in Russia and bear the firm name of* **T. I. Hagen,** *representative for the whole of Russia.*" * * * It needs no argument to show that the advertisements of Hagen were *unfair and fraudulant* in character, and were calculated to displace and divert the good will of appellee's business, *and to cause the public to believe that the Remington Sholes machine (Remington Imperial) was the only genuine Remington machine in the market.* The Remington-Sholes Co.'s so-called manager, Franklin Remington, aided and abetted Hagen in his unfair and fraudulent scheme.

It may be suggested that in behalf of the Remington Sholes Company, that it did not sell its machines *directly* to this Russian dealer, Hagen, *and that he got them through an intermediate agent or dealer;* but we submit that *this is wholly immaterial,* since the *natural* consequence of marking its writing machines so as to cause them to bear the name 'Remington' in the market was to deceive the *ultimate* purchaser. and **such deception will be restrained even though the original purchaser or dealer was not deceived.** As aptly said by the Court in Singer Mfg. Co. *v.* Loog, 18 Ch. D., 412, adopted by Lord Macnaghten in Reddaway *v.* Benham (1896), A. C., 179: "No man is entitled to represent his goods as being the goods of another man, and no man is permitted to use any mark, sign, symbol, device, *or other means,* whereby, without making a direct false representation of himself to a purchaser, who purchases from him. *he enables such purchaser to tell a lie, to make a false representation to somebody else who is the ultimate customer.*"

In the same case, Cotton, L. J., observed: "*If a man does that, the natural consequences of which* (although it does not deceive the person with whom he deals, and is therefore no misrepresentation to

him) *is to enable that other person to deceive and pass off his goods as somebody else's, for that he is answerable.*"

As above observed, the advertisements of Hagen, taken in connection with Remington's affidavit, the stipulations made on behalf of appellants, show that Hagen was making *unfair and fraudulent* representations, which were calculated to deceive the *ultimate* purchaser, and *Remington, the representative of the Remington-Sholes Company, was in Russia aiding and abetting him in the premises.*

(11) There remains to be considered one other Exhibit relating to foreign matters, to which the attention of the Court will be called, to wit, **"Complainant's Exhibit, photographs Nos. 1 and 2 Remington-Sholes retrospective exhibit at the Paris Exposition."**

R., pp. 1001, 1002.

It appears from the testimony of **John F. McClain** (R., pp. 604–611), that the "Remington-Sholes Company" had an Exhibit at the Paris Exposition in the year 1900.

*Franklin Remington was there in charge of that Exhibit.* This company exhibited five or six of its writing machines, and in connection therewith "*what they called the original Remington machine, from which their present models were evolved.*" The witness identified the photographs, Nos. 1 and 2, as correct reproductions of the "Sholes & Glidden Typewriter," being the first writing machine manufactured by E. Remington & Sons.

An announcement was displayed upon and in connection with this machine. A short distance away from the regular exhibit of the "Remington-Sholes" machines was displayed, what they termed their **"Retrospective Exhibit,"** which consisted of the machine shown in the reproductions produced from photographs thereof, **together with photographs of three generations of the Remington family—the grandfather, father and Mr. Franklin Remington.**

R., p. 611.

**G. J. Wallau,** who had charge of appellee's Exhibit at this Exposition, testified that the Remington-Sholes Company exhibited a number of Remington-Sholes typewriters, having carriages of different widths and of different colors. *They exhibited a hand-made model of the Sholes & Glidden machine, which was afterwards made by E. Remington & Sons.* This model appears to have been loaned to them by the Buffalo Historical Society. On this model was displayed an announcement which could be read, and which he says "was probably read more than any other announcement in the typewriter section." The announcement read as follows: **"The Remington-Sholes Company.** This machine is the first practical typewriter ever made, and was the invention of Mr. C. Latham Sholes, the father of the inventor of the Rem-Sho typewriter. It was later improved and manufactured by the well-known firm of **E. Remington & Sons.** This machine, though crude, contains many of the principles upon which the Rem-Sho typewriter, the invention of the younger Sholes, is built."

Wallau said that Franklin Remington was invariably present, when anything of importance to the interests of typewriter exhibitors was about to occur. He also stated that the Remington-Sholes Company had an office or agency in Paris, where the Remington-Sholes machines were offered for sale. The name Remington-Sholes Company was on a sign over the door of the office and the letter heads and advertising matter all bore the name of said company. Franklin Remington was frequently seen by him in company with the local manager of the office in Paris.

R., pp. 612-617.

It will be observed that the *statements and representations*, concerning the origin, etc., of the Remington-Sholes typewriter, set forth in the announcement upon the Sholes & Glidden typewriter, shown

in complainant's exhibit photograph No. 2, etc. (R., p. 1002), are similar to those hitherto mentioned. As heretofore noted, the *true* facts in the premises were not stated, and the *original* machine, out of which appellee's product was evolved, *was used by the Remington-Sholes Company as a basis for, and means of, associating and connecting its machine and business with that of E. Remington & Sons, the predecessors of appellee.* In other words, here, as in other connections, the Remington-Sholes Company endeavored to divert to itself the good-will, associated with the name "Remington," and thereby rendered the good-will of appellee's business precarious.

## THE PUBLIC HAS BEEN MISLED.

(1) From December, 1897, until July 19, 1898, **Andrew J. Scorer** was employed by the Howe Scale Company in Pittsburg and vicinity as a salesman to sell the Remington-Sholes typewriter.

R., pp. 345, 346.

While so engaged, he canvassed Pittsburg and the surrounding towns, for the purpose of selling the Remington-Sholes typewriter.

Scorer says he was informed by appellants' witness, Baldwin, that his business was to go out and sell typewriters, *and tell anything that was necessary to sell them.*

R., pp. 347, 348.

Scorer also states that *he understood that Mr. Franklin Remington was one of the Remingtons who manufactured the Remington Standard, and that he told prospective purchasers that he was one of the same Remingtons.*

R., p. 350.

*He endeavored to convince purchasers that the Remington Sholes was the same thing as the Remington Standard, and for a long time he believed such to be the fact.*

R., p. 360.

*He was led to believe that a Mr. Franklin Remington, who was connected with the Remington typewriter, was engaged in the manufacture of the Rem Sho, and believed the machine was made by Mr. Remington.*

R., p. 362.

*He represented to prospective purchasers that the Rem-Sho typewriter was manufactured by Mr. Remington, who was connected with the Remington typewriter.*

R., p. 363.

**One Echols, who was a representative of the Rem-Sho typewriter,** induced him to come to Pittsburg to sell that machine, and gave him to understand that Mr. Remington, who was manufacturing the Rem-Sho machine, was, or had been, connected with "the Remington."

R., pp. 364, 365.

Among other things, Scorer testified that he *believed* that one Mrs. Vance obtained a Remington-Sholes machine, supposing it was manufactured by the "Remington people." This was the only person alluded to by Scorer in his direct-examination as being one whom he believed to have purchased a Remington-Sholes machine, thinking that it was manufactured by the "Remington people."

In cross examination, Scorer was requested by appellants' counsel to name any other persons whom he believed had purchased Remington-Sholes machines under the impression, or belief, that it was a Remington machine, and, in answer thereto, he mentioned the names of three other persons. *Insofar*

*as the witness testified concerning persons other than Mrs. Vance, he did so as appellants' witness and not as appellees'.*

Mrs. Vance was subsequently called as a witness by the appellants, for the purpose of showing that when she obtained the Remington-Sholes machine of Mr. Scorer, she was in nowise misled or deceived. She testified that she obtained the Rem-Sho machine in 1897 or 1898, from Mr. Scorer, and alleged that she took the machine upon trial, and that she had different machines for about a year.

R., pp. 1208, 1209.

On her direct-examination, *inter alia*, she was interrogated and answered as follows:

Q. 28. When you took the *Rem-Sho machine* on trial, did you suppose that it was *the same as the Remington Standard*, or was manufactured by Wyckoff, Seamans & Benedict?

Objected to as leading.

A. **I did not think it was quite the same machine as the Remington; I did not know who manufactured it.**

R., p. 1211.

In cross-examination Mrs. Vance testified as follows:

"xQ.47 Did you think or suppose that there were two machines on the market using the name Remington? A. I really did not think anything about it; I wanted to buy a machine and *I wanted a Remington*, and Mr. Scorer heard that I wanted to buy a machine and came in and asked me to buy the Rem-Sho—said that it was a new machine that was just put on the market, and I did not want to take it—I told him I did not care to invest in a machine that had never had any test, and then he put it on trial—said if it wasn't satisfactory, I needn't keep it. **He told me that it was as good**

**a machine as the Remington, and that one of the parties who had once been connected with the manufacture of the Remington was in this new company.** * * *

xQ. 49. And as I understand you, gotten up by people who had formerly been connected with or manufactured the Remington? A. *He said one man who had once been in the Remington Company was now connected with the new company.*

xQ. 50. And you understood that that man's name was Remington? A. I really do not remember whether he told me that man's name or not, but I think it was the son of the Mr. Remington who was in the Remington Manufacturing Company. * * *

xQ. 64. Now, Mrs. Vance, you will kindly tell me *why*, if you know, or for what reason, as you supposed, *Mr. Scorer stated to you that the so-called Rem-Sho machine was made by people, or was manufactured by some one who had formerly been connected with the manufacture of the Remington machine?*

Objected to as immaterial and irrelevant.

A. *To induce me to give it a trial.*"

Mrs. Vance was subsequently further cross-examined as to a statement which she made on the 14th day of July, 1899, in the presence of Mr. Crean, to his stenographer, Mrs. H. B. Ferguson, who was at that time Miss Stein.

R., pp. 572–576.

**Mrs. H. B. Ferguson** was called as a witness and testified that she took down, stenographically, the statement of Mrs. Vance and afterward copied the same on the typewriter. She identified the paper shown her as *a correct copy of her stenographic notes.* She said that the statement was read over to Mrs. Vance directly after it was made and copied, and that Mrs. Vance pronounced it to be correct.

R., pp. 577–589.

In her statement Mrs. Vance says: "Mr. Scorer told me the machine he handled was the Remington-Sholes manufactured by the people who had manufactured the Remington machine; * * * my understanding from Mr. Scorer's conversation to the effect that the name 'Remington' was used in connection with the name of the machine he was handling, *gave me to believe that his machine was a species of Remington machine*, and feeling, as I did, that I wanted only a *Remington* machine, I thought I would not be getting away from my preference in taking the machine. With this understanding, I agreed to and did purchase a Remington-Sholes machine." * * * "It occurred to me at that time, and I thought that inasmuch as the people who manufactured the Remington-Sholes formerly manufactured the Remington, that that fact gave them the right to use the word 'Remington' in connection with the name of their machine."

R., pp. 591–593.

Mrs. Ferguson's testimony was fully corroborated by Mr. T. F. Crean.

R., pp. 591–593.

It is perfectly plain, from Mrs. Vance's testimony, that *she understood and believed* that the Remington-Sholes machine was being manufactured by a *Remington*, who had formerly been connected with the manufacture of the Remington Typewriter, and had once been in the Remington Company.

She admitted that she was induced to take the Remington-Sholes machine, and to give it a trial, *because Mr. Scorer stated to her that the Rem-Sho machine was made by people, or was manufactured by some one, who had formerly been connected with the manufacture of the Remington machine.*

This is in substance and in effect about what Scorer said in his testimony, to wit: that Mrs. Vance took the "machine *believing* that it was manufactured by the Remington people."

Appellants called **Mr. John E. Kunkel,** as a witness, who was a member of a law firm, which obtained a Remington-Sholes Typewriter of the Howe Scale Company, through Mr. Scorer.

In cross-examination, Kunkle testified as follows: "xQ. 28. Do you now recall the fact that he (Scorer) made any statement to you to the effect that the *Remington-Sholes machine*, or Rem-Sho machine, *was made by a concern that had a Remington associated with it*? A. *I understood from him that there was a person who had been connected with the manufacture of the Remington machine that was interested in the manufacture of the Rem-Sho*, but whether his name was *Remington* or not I do not recall; *my recollection, however, is that that was the name he gave, but at that time this person had severed his connection with the Remington people entirely.*"

R., p. 1366.

Kunkle's statement is in entire accord with Scorer's testimony, *that for a long while he believed that Mr. Remington, who was or had been connected with the Remington Typewriter, was engaged in the manufacture of the Remington-Sholes machine*, and says that he was led to this belief by statements made to him by agents and representatives of the Remington-Sholes Company. In other words, notwithstanding he was *a salesman of appellants, and was selling the Remington-Sholes machine*, he for a long time *believed*, that that machine was manufactured by a person *who had been connected with and engaged in the manufacture of the Remington Typewriter.*

True, Baldwin denied that he told Scorer to tell anything that was necessary to sell Remington-Sholes machines and alleged that he *cautioned* Scorer against making any *misrepresentations, or using deception* in any manner, *thereby implying that there was danger of misapprehension and deception in the sale of this typewriter.* But in this

connection, the Court will bear in mind that Baldwin *admitted* that he had stated to *prospective* purchasers of typewriters, as well as to *agents* and *dealers* of appellants that the Remington-Sholes machine was "*the only typewriter now made by a Remington*"; and when asked **what his object was in telling prospective buyers, or dealers, or agents that, replied, "My object then and now and always has been to get business, the same as any other salesman."**

Scorer said that Baldwin told him that *his business was to sell typewriters, and to make any statement necessary to get a foothold;* and it is perfectly manifest that Scorer's statement in this regard is true. The object and purpose of the appellants, and the Remington-Sholes Company and their agents and dealers, in dangling Mr. Remington before the eyes of purchasers, and in stating and causing it to be believed that he had formerly been *connected* with the "Remington Typewriter" and the manufacture thereof, was to induce people, who were *pre-disposed* to purchase Remington machines (and there were many such) to take the so-called Remington-Sholes *as a Remington machine*, or a new and improved Remington. **It was an adroit scheme, and one well calculated to displace appellee's product.**

(2) **Alfred Stallwood** of Chicago, Ill., testified that he was a commission merchant doing business in that city, and that, at the time he gave his testimony, he had a *Remington* machine. It was the only writing machine in his office, and was obtained of the appellee about two weeks before he gave his evidence. Prior to that time he had a *Remington-Sholes* machine, which was at his office about five months on a monthly rental of $4.00 per month. At the time the Remington-Sholes typewriter was obtained, his business was conducted under the firm name of *Bartelme & Stallwood.* Bartelme died on the 18th of March, 1899, and Stallwood conducted the business under the same name up to Nov. 1,

1899, and thereafter under the name of Stallwood & Co. Stallwood said that he ordered the Remington-Sholes machine for the firm of Bartelme & Stallwood, at an office on the second floor of the building on the corner of State and Madison Streets. He saw a number of typewriting machines there. *He got the address from the telephone book or directory at his store.* It was the regular telephone book in use. *At the time he rented the Remington-Sholes machine, he did not know from actual experience of the typewriting machine, which was designated or termed Remington, or Remington typewriter, and his only knowledge thereof was from seeing the machine advertised so much, and he got it into his head that this machine must be all right. At the time he rented this Remington-Sholes machine, he intended to obtain a Remington typewriter, but the machine which he did obtain was the Remington-Sholes.* He said that when he consulted the city directory *and saw the name Remington, he did not look any further.* He did not examine the machine, which he saw in the salesroom, *and received no circulars or catalogues or business cards at the time.* The rental receipts and correspondence about it were signed by his bookkeeper. He first examined the machine after seeing it in his office. There was no cover with it. *He did not operate the machine himself and said his first information that it was not the Remington machine, manufactured by appellee, was from his stenographer, who told him that the machine he had was not the regular Remington.* This conversation was a week or two after the machine was received.

R., pp. 482, 487.

It is plain that when Stallwood rented and received this machine, he took it, *believing* that it was a *Remington* typewriter, manufactured by appellee, *and this belief was caused by his having seen the machine advertised so much, and having heard of it, and learned that it bore a high reputation among purchasers and users of typewriters.*

Manifestly he did not know, and did not suppose that there was more than one machine on the market which bore the name "Remington," or that there was more than one concern using that name in connection with the typewriter business. Stallwood was misled in consequence of the use of the name "Remington," by the Remington-Sholes Company, as a part of its corporate name, and upon and in connection with its product.

Even his stenographer only knew that it was not "the *regular* Remington." That is, the model or type of machine which she had been accustomed to see.

It was not necessary that Stallwood should know the name of the manufacturer who used the designation "Remington" for its machines. When the appellants rented him a machine bearing the name "Remington," they represented to him in effect that it was of that manufacture known as the "Remington typewriter."

Powell *v.* Birmingham, V. B. Co., Ld., (1897) App. Cas., 715.

(3) **Weingart Sale.** Another person who obtained a Remington-Sholes machine of appellants, *believing and supposing that it was manufactured by appellee, and was the Remington typewriter, was* **Samuel Weingart,** who was and is the principal of a large and flourishing private school in the Borough of Manhattan, City of New York. In June, 1898, Prof. Weingart bought a writing machine of **Page, Dennis & Co.,** who were the local agents of the appellants, their store and place of business then being at No. 341 Broadway, Borough of Manhattan, New York City. Weingart said that *he had intended buying a Remington typewriter for a long time.* He bought a scale of the Howe Scale Company, and *his attention was called to a sign in that store of The Remington Typewriter Company.* He asked how much a Remington typewriter was worth, and they told him $100. He says he asked

them whether they would give him a discount, as he was the *principal* of a school, and the salesman answered that he would give him the regular discount in such cases, which was 35 per cent. He sent his check to appellants for $65.00 on June 29th, 1898, and the machine was shipped to him. *He testified that the sign displayed in the store bearing the name "Remington" was what attracted his attention.* **That he asked them whether they sold the Remington typewriter, and they said yes. He was positive that he had bought a Remington typewriter, and rested in that belief until a few weeks after, when a friend of his wanted to write on the machine, who owned a Remington, and told him that his machine was different from his, whereupon he came to the conclusion that he had a different instrument, although he did not know at that time that he had bought from a different concern. At the time he purchased this machine of Page, Dennis & Co. he believed that he was purchasing and obtaining the old and well-known Remington typewriter, such as had been known for many years in the market.**

In cross-examination, he stated that he called at the office of the Howe Scale Company (Page, Dennis & Co.), twice before purchasing the machine. *He did not receive any catalogue*, and before purchasing a machine, from the Howe Scale Company, went to the Smith Premier typewriter office, a few doors away, and when he found that their price for a typewriter was the same, he went back the next day to the **"Remington people"** and asked them for a discount, and when they granted it to him, he told them he would send them a check for $65.00, and that upon receipt of the check they should send him the typewriter to his summer place in Ulster County, New York. *He had never seen any of the typewriters before, and relied upon the name* **"Remington."** *He did not know the makers of the*

*Remington machine. He had heard the Remington typewriter talked about, and had seen it advertised. All he noticed on the sign was Remington Typewriter Company. He did not notice the word "Sholes" on the sign, and this would not have made any difference in his mind, as he was not aware that there was more than one company using the name Remington. He did not recall that there was any name or manufacturer's address upon the machine, and no cover was furnished with the machine. He did not recall that the name Remington-Shoes Company, Chicago, Ill., was on the front bar of the machine.* But even if it was there, *so long as the name Remington was on the machine, he was satisfied.* He did not recall the fact that the name or word "Sholes" was mentioned, and did not remember having seen it, before the date of his testimony, in connection with a typewriting machine. **When he was dealing with the Howe Scale Company he was under the impression that they were selling the Remington typewriter, and continued under that impression until about three weeks after the machine was in his possession, and then even, he did not know that the machine he had purchased was of a different concern, although he then knew that it was a different make from that of his friend, who owned a Remington typewriter.**

**He was only told the truth when he came back to the city in the fall of 1898.** He said if he had been told by the young man in the Howe Scale Company's office that they were selling *the Remington-Sholes typewriter*, and had seen a sign bearing the name Remington-Sholes typewriter, *it would have made no difference to him, as he would have thought it a certain kind of Remington machine made by the Remington people. He did not know the full name of the company, or the place where the machines were manufactured.* He testified that if anybody had asked him after he had bought the machine whether he had ever heard the

name "Remington-Sholes" before that, he would have said no.

He further testified that *the sign may have contained the name "Sholes" attached to the name Remington, but it made no impression upon him.* The conversation, on the occasion of his first visit to the Howe Scale Company office, lasted not more than five or ten minutes.

He told the *salesman*, he was anxious to buy a typewriter, *and asked him whether they had the Remington typewriter.* He gave his check payable to Page, Dennis & Company, dated June 29, 1898. He had been principal of his school since 1874; a day and boarding school, of which he was the proprietor. His school had numbered for the last ten years from 110 to 140 pupils.

R. pp. 510-518.

On cross-examination in rebuttal, Weingart stated that *he had never seen the name Sholes* prior to the purchase of the Rem-Sho typewriter. He went to the Howe Scale Company's store to buy a scale, and noticed a sign that the *Remington* typewriter was sold in that store. *He asked the salesman who sold him the scale whether they sold any Remington typewriters. He said yes and introduced him to a gentleman on the other side of the store.* The name *Remington* must have drawn his attention, otherwise he would not have thought of buying a machine in a store which he entered for the purpose of buying a scale. His attention being called to "Defendant's Exhibit Rem-Sho sign from the office of Page, Dennis & Co.," he stated that **if he had seen the sign shown to him, he would have believed that a Remington typewriter was manufactured by a firm which called itself the Remington-Sholes Company, because he never knew who the manufacturers of the Remington typewriters were, nor where their factories were located, nor who their agents were.** He had seen a sign,

but did not know whether it was the one shown him or not. The sign shown him reads:

"REM-SHO TYPEWRITER,
Manufactured by
THE REMINGTON-SHOLES CO.,
Chicago, Ill."

He did not know whether the sign contained the name "Rem-Sho," *but it must have contained the name "Remington," which was the only thing that attracted his attention.* The sign was located on the right-hand side of the store as he entered, on the wall between the office of the gentleman to whom he was introduced and the store window. He remembered the sign was a large one, and that it was upon the wall over that part of the store in which the "Rem-Sho" typewriters were sold. He did not remember whether the name "Sholes" was on the sign.

If the name "Rem-Sho" was used in the conversation with the agent, he took it for Remington, but did not remember having heard the word "Rem-Sho" until long after he had purchased the machine. **He never knew that there was more than one kind of Remington typewriter, and when he saw the name "Remington," or "Manufactured by Remington," he only asked the price, and if the salesman used the word Rem-Sho, or Remington-Sholes, he thought it was one of the kinds of machines the Remingtons manufactured.** He did not remember the name "Sho." To the best of his recollection he never heard the name "Sholes" until some time after he bought the "Rem-Sho" typewriter. He did not know whether he saw "Defendant's Exhibit Page, Dennis & Co. Card," before or after the purchase, *but anyhow it would not have impressed him otherwise than that Page, Dennis & Co. were the representatives of the Remington typewriter.*

He did not remember to have received any "Rem-Sho" *catalogue*, like Defendant's Exhibit Rem-Sho catalogues Nos. 2 and 3. He was at their store twice; did not remember whether he spoke on both occasions to the same man. Being asked how he happened to go to the Howe Scale Company in the first instance, he said it was a few days before he went to the country, and he visited several stores to buy a large scale, and among others the store of the Howe Scale Company. The only other typewriter store, he noticed, was the Smith Premier, and he went there to enquire the price of their typewriters. He did not ask for the address of the Remington typewriter.

R., pp. 642–648.

The foregoing is the substance of Prof. Weingart's testimony, and it shows that *he was actually misled, and purchased a Remington-Sholes machine of appellants and for the Remington typewriter.*

In reply to the evidence of Prof. Weingart, defendants examined as witnesses **Hamlin E. Hatch** and **Thomas O. Parker.**

Hatch testified that he called at Weingart's School before June 22, 1898. He saw Weingart, and in reply to a question as to what occurred at the time of the call he said: "As near as I remember I introduced myself by handing him my card. I did not have any lengthy conversation with him."

R., pp. 1054–1055.

According to Parker's evidence, Hatch's visit must have occurred after the first visit of Weingart and before the second one.

R., p. 1280.

**Weingart** testified in rebuttal, that he did not remember any interview with Hatch. He had no recollection that Hatch called at his school, or handed him, or sent in his card; but said *that a*

*great many agents handed in their cards to him which he never examined.*

R., p. 641.

Obviously the visit of Hatch, if any, to Weingart's school, *made no impression on the Professor's mind*, and there was nothing in the incident, or in his presentation of the card, which in any way suggested to him, or indicated to him, that the writing machine, which he afterwards purchased, was not the *Remington* typewriter manufactured by appellee.

Parker's testimony shows that there were signs displayed in the office of Page, Dennis & Co., No. 341 Broadway, containing the words "Remington-Sholes Company," and it also appears that the words "**Remington-Sholes Typewriters**"—not "Rem-Sho"—were displayed upon one or more of the *front* windows of the store.

In his direct examination, **Parker testified that Weingart asked him "if he had a Remington machine."**

R., p. 1282.

In cross-examination he testified, **"I do not recall having sold any one save Mr. Weingart, who came in and seemed to have an intention of buying a Remington machine.** * * * In my reference to Mr. Weingart, when I said he seemed to have an intention of buying a Remington machine, *I meant that he inquired for the Remington machine as stated in my direct examination.* * * * When I said that I endeavored to sell every man that came in there inquiring for typewriters irrespective of make, *I intended to convey the idea that the inquiries for Remington Standard machines were included in this number.* * * * *I do not think I said that I sent all parties who inquired about Remington machines to the Remington office.* I think I said parties who inquired for the Remington *office.* Whenever it was asked me where the

Remington could be bought, I gave the desired information, that is I told them where the Remington *office* was located. * * * **Yes; I tried to sell anybody who came in a Rem-Sho machine**; if I could not sell these parties, I would not withold from them any information in regards to the Remington, or the location of the Remington office."

R., p. 1288.

In direct examination, Parker was interrogated and answered as follows:

**Q. 45. Do you recall whether or not you told Mr. Weingart where or by whom the Remington Standard machine was being sold? A. I do not recall that, but I know I told lots of people who came there inquiring about the Remington machine and where it was sold, just where their office was.**

R., p. 1283.

*From Parker's evidence it will be seen that Weingart had the intention of buying a Remington machine, and that he asked Parker if they had a Remington machine, and that Parker endeavored to sell everybody a typewriter who came into the store of appellant.* He admitted that he had no recollection of telling *Weingart where the Remington office was*, and that he did not send *all* parties who inquired about *Remington machines* to the Remington *office*. It was *only* when they inquired for the Remington *office*, that he sent them, *in case he could not sell them a Rem-Sho.* It is, therefore, plain *that Weingart desired and intended to purchase appellee's writing machine, and that Parker desired to sell him the Remington-Sholes writing machine. So much is clear.*

**Weingart said that he not only intended to buy the Remington typewriter, but supposed that he had purchased that machine, until he was informed to the contrary several weeks after he purchased the Remington-Sholes Typewriter.**

Parker alleges that he explained the machine to Weingart in detail, on the occasion of his first visit, showing him the No. 2 and No. 3 "Rem-Sho" typewriters. He testified that Weingart visited the office of appellants twice, and that on the occasion of his second visit he gave the order for a machine. He asserted that in answer to Weingart's question as to whether they had a *Remington* machine, he told him no, but they had a better machine, one which combined the best qualities of the Remington with those of the Smith Premier, and explained the difference between appellants' machine and the Remington. This is in substance his statement of the transaction.

R., pp. 1279, 1280.

According to Parker's testimony he must have made the *usual* statement to Weingart *that Mr. Franklin Remington was the son of the man who first manufactured the old Remington machine*, for he testified: "I don't think I ever sold a machine to a party to whom I did not state that the manager of our company, Mr. Franklin Remington, was the son of the man who first manufactured the old Remington machine, and that our Mr. Sholes was the son of the inventor of the old Remington. * *"

In the light of this testimony, it is very clear that Weingart heard a great deal from **Parker** about **"the old Remington machine,"** at the time he obtained the Remington-Sholes typewriter.

Prof. Weingart was called in rebuttal on behalf of appellee, and denied the statement of Parker to the effect that he told Weingart that they did not sell the Remington machine, but that they had a better one, etc.

R., pp. 641, 642.

Weingart testified that a salesman in the store told him they sold Remington typewriters.

**There is no doubt about the fact that Weingart was misled and deceived, and purchased the**

**Remington-Sholes Typewriter as and for the Remington manufactured by appellee.** Neither Weingart nor Stallwood had ever before owned a typewriting machine of any kind, and neither of them were operators thereof. *Both of them had seen advertisements of the Remington machine and heard much about it; knew its reputation in the market, and among purchasers and users of writing machines, and like most purchasers were unacquainted with the physical characteristics of the machine, and its appearance and the details of its structure.* They only knew the complainants' product by **reputation,** and by "**catch words easily retained in the memory**" — "**Remington Typewriter**" — **and believed it to be the product of Appellee—the "Remington Typewriter Company."**

**It was the names "Remington" and "Remington Typewriter Company," which were present in the minds of Stallwood and Weingart when they obtained their writing machines, and the name "Sholes," having no repute in the trade, made no impression on their minds.**

*Weingart testified that he never knew that there was more than one kind of Remington typewriters, and when he saw the name Remington and manufactured by the Remington Company, he was satisfied and only asked for the price;* that if the salesman used the word "Rem-Sho," or "Remington Sholes"—and he was quite positive the salesman did not—*he would have thought it was one of the kinds of machines the Remingtons manufactured.* In other words it would have indicated Remington connection to him and implied the original manufacture. It suggested to Stallwood and Weingart that the machine "had been made by the Remington concern, whose name was a 'by-word for good workmanship the world over.'" It is plain that the name "Sholes," which was used in connection with the name Remington, both in the corporate name and in the designation of the machine, did

not disturb or displace the belief, in the minds of Stallwood and of Weingart, that the machines, which they obtained, were *Remington* typewriters manufactured by appellee. **That which was most salient was fixed in their minds, and they did not go into the minuter refinements of the names and words upon the signs or machines.**

In Walter Baker & Co., Ltd., *v.* Saunders (80 Fed. Rep., 889, 894), the Court observed that: "As was said in the quotation *supra*, complainant's goods had become well known as 'Baker's Chocolate,' and when Baker's Chocolate was called for, it was understood to be Walter Baker's Chocolate that was intended. *The public do not go into the minuter refinements of the title or the label.* Whether it is described as 'Walter Baker's Chocolate,' or 'Wm. Baker's Chocolate,' or 'W. H. Baker's Chocolate,' or 'W. H. Baker's Best Chocolate,' *so long as the title contains the words which in trade and among consumers have come to be the every-day designation of complainant's goods, the chocolate so labeled will naturally be assumed to be complainant's.* * * *"

To the same effect:

> Johnson & Johnson *v.* Bauer & Black, 82 Fed. Rep., 662, 663; Read *v.* Richardson, 45 L. T. N. S., 54; Cox's Manual, No. 698; Saxlehner *v.* Eisner etc., Co., 179 U. S., 19, 33.

In Wotherspoon *v.* Currie, 22 L. T. N. S., Malins, V. C., said: "Whatever words or description he (Deft.) used on his labels, he should not have used the one word which would prove injurious to the plaintiffs."

The name "Remington" had become the trade denomination of appellee's machines long before appellants' machines were put upon the market, and it was not necessary that Weingart or Stall wood should know the name of appellee because

the designation "Remington Typewriter" meant to the public the manufacture of appellee.

Powell *v.* Brewery Co., Ld. (1897), App. Cas., 715.
Menendez *v.* Holt. 128 U. S., 514, 521.

As said above, Stallwood and Weingart belonged to that large class of purchasers, *who are not operators of typewriting machines, and are not familiar with the physical characteristics or appearance, or the details of construction of writing machines, but know the trade name and reputation of appellee's typewriters.* That there is a *large class* of such purchasers was clearly proven in this case.

R., pp. 448, 449, 451, 454, 543, 544, 549, 550, 606, 607.

This *large* class of customers instinctively think of the "Remington," when the subject of writing machines is mentioned, and we have hitherto shown that *the good will associated with that name is a very important factor in the sale of a typewriter.*

The appellee's machine becoming widely known as the "Remington," and its business as that of the "Remington Typewriter Company," it is perfectly obvious that any *new* concern coming into the market, *and designating its business and product either wholly, or in part, by the name Remington,* would most certainly *mislead and deceive purchasers* of the class above mentioned.

**In American & English Encyclopedia of Law, Vol. 26, p. 416, it is said that "the imitation of a name by which goods are known is frequently the most dangerous form of imitation, for the reason that purchasers may be misled who are entirely unfamiliar with the genuine goods, but who have only seen the name advertised, or have been told of the goods by their name by others and asked for them by name, without ever having seen them. The purchaser, under**

**these circumstances, is much more liable to be misled and to accept the goods of an imitator for those of the owner of the trade name, than where familiarity with the goods is necessary."**

This was the case with Stallwood and Weingart, who were unfamiliar with the appellee's machines, but had seen the name—"Remington Typewriter" —advertised, or had been told of appellee's machines by their trade designation by others; and hence, when they saw the name "Remington" upon appellants' machines, and upon its signs, etc., they believed the machines, obtained, were the *genuine* article, *and the title containing the word which, in trade and among purchasers had come to be the every day designation of appellee's machines, they naturally assumed such machines to be of appellee's manufacture.*

In this connection the words of the Circuit Court of Appeals of the 7th Circuit, quoted with approval in **Johnson & Johnson** vs. **Bauer & Black,** 82 Fed. Rep., 663, are of force and pertinent. Judge Jenkins writing said: "A specific article of approved excellence *comes to be known by certain catch-words easily retained in memory; or by a certain picture which the eye readily recognizes. The purchaser is required only to use that care which persons ordinarily exercise under like circumstances. He is not bound to study or reflect, he acts upon the moment. He is without comparison. It is only when the difference is so gross that no sensible man acting on the instant would be deceived that it can be said that the purchaser ought not to be protected from imposition.* Indeed some cases have gone to the length of declaring that the purchaser has a right to be careless, and that his want of caution in inspecting brands of goods with which he supposes himself to be familiar ought not to be allowed to uphold a simulation of a brand that is designed to work a fraud upon the public. However that may be, *the imitation need only be slight if it attaches to what is most salient, for the usual inattention*

*of the purchaser renders a good-will precarious if exposed to imposition.*"

The conditions, under which purchasers ordinarily purchase, and the care which they exercise in the purchasing of typewriting machines is clearly set forth in the testimony of the appellee's witnesses last above cited. *It there appears that to a very large extent, purchasers do not personally operate the machines*, and that it is the *exception* when the buyer of a typewriter possesses any information in respect to the *details* of the machines. The ordinary buyer purchases upon the *reputation* of the machine, and relies upon the *trade-name* or designation associated with it.

Ordinary purchasers include incautious, unwary, and ignorant purchasers.

McLean *v.* Fleming, 96 U. S., 245, 256.
Celluloid M. Co. *v.* Cellonite M. Co., 32 Fed. Rep., 92, 97.
Bissell, etc., Works *v.* Bissell, etc., Co., 121 Fed. Rep., 366.

It has frequently been held that the *ignorant* and *unwary* purchaser is as much entitled to protection as the sharp and shrewd one.

Von Mumm *v.* Frash, 56 Fed. Rep., 830, 839; McLean *v.* Fleming, 96 U. S., 256; Coleman *v.* Crump, 70 N. Y., 573, 578.
Glenny *v.* Smith 11, Jur. (N. S.), 964.
Wetherspoon *v.* Currie, L. R. 5, H. L., 508 (1872).
Singer M'f'g Co. *v.* Loog, 8 App. Cas., 18 (1882).

Counsel for appellants *admitted*, in the court below, that "Weingart may have been mistaken," but contended that he was not deceived. Counsel also said that "It may be urged, however, that even if he was not deceived, still his purchase of the Rem-Sho machine upon the supposition that it was complain-

ants' indicates a tendency toward confusion in the trade. The conclusive answer to such contention is *first*, that if the Remington-Sholes Company rightfully used upon its signs the words 'Manufactured by the Remington-Sholes Company, Chicago, Ill.,' no ground of complaint exists."

If "Weingart may have been mistaken," as *admitted*, it follows that he may have been *misled* and may have taken appellants' machine as and for the "Remington" typewriter. Weingart says he purchased the appellants' machine supposing it to be the production of appellee. *was misled*, and deceived by seeing the name Remington prominently displayed in the Defendant's store and was told by a salesman therein that they sold Remington typewriters. In respect of appellants' alleged *conclusive* answer that *if* the appellants *rightfully* used the words, "Manufactured by the Remington-Sholes Company of Chicago, Ill.," upon their signs, etc., then no ground of complaint existed, it is to be noted that those were not the *only* words which the appellants used upon their signs and machines, and in connection with their business. Appellants *admitted* that they used the words "Remington-Sholes" as well as the abbreviation "Rem-Sho" upon their machines and as designations therefor, and that the words "Remington-Sholes Typewriters" were painted upon the windows and signs of their store, No. 341 Broadway, where Weingart purchased his machine.

In the sale-slip of the Weingart machine, the *full* name and not the *abbreviated* one was used, to wit: "Remington-Sholes Typewriter."

R., p. 1460.

It is plain, therefore, that the name "Remington" was *prominently* put forward in appellants' store, *so as to be likely to catch the eye of Weingart and to remain in his memory*. He *wanted* appellee's machine, the *distinctive* name of which was and is "Remington"; and with this name in his

eye and mind he did not go into *details*, and was not required to do so. Appellants then used this distinctive name upon their signs and machines.

Says Kerly in his work on Trade-marks, p. 491:

**"Only things which are put prominently forward so as to be likely to catch the eye of the purchaser and remain in his mind need generally be considered."**

Similarity in the main distinguishing feature is generally sufficient to constitute infringement or unfair competition. Wortherspoon *v.* Currie, L. R. H. L. 508; Saxlehner *v.* Eisner, etc. Co., 179 U. S. 19, 33.

Appellants' signs, etc., displayed the words "Remington-Sholes Typewriters," which as already said, and as found by the court below, *indicated Remington connection in typewriter production, and implied the original manufacture.*

Weingart testified in substance that the sign shown to him, and which he did not recollect, would have caused him to believe that a *Remington* typewriter was manufactured by a firm calling itself the Remington-Sholes Company, and that if the *salesman* used the designation "Rem-Sho," or "Remington Sholes" *he thought it was one of the kinds of machines the Remingtons manufactured.*

In respect of the appellants' contention that Weingart did not use ordinary care and caution in the purchase of his machine, it is to be noted that he was one of *a large class of purchasers* who only know appellee's machine by its *reputation and its trade-name*, "*Remington*," and are not familiar with the *physical* characteristics and *details* of construction of the machines. Moreover, prior to the time when appellants entered the typewriter field, the public and purchasers and users of machines had come to know, or to believe the fact, that there was but *one concern* that manufactured and sold a writing-machine bearing the name "Remington." Weingart testified that he never knew that there

was more than one concern selling it. Under these circumstances it was *inevitable* that the names employed by the appellants upon and in connection with the sale of their machines, should be understood by Weingart, and any ordinary unsuspecting purchaser, to indicate appellee's product.

Weingart was only required to use such care as persons ordinarily exercise in the purchase of typewriters under like circumstances. He was not bound to study or reflect. He was without the opportunity of comparison, and had a right to rely upon the name "Remington," which was the *salient* and *dominant* feature in the name of appellant's machine, as implying and indicating the *original* manufacture.

Pillsbury *v.* Flour Mills Co., 64 Fed. Rep., 841, 847.

Powell *v.* B. V. Brewery Co., Ld. (1897), App. Cas., 715.

## INFRINGEMENT.

**The Howe Scale Co. and Remington-Sholes Company—Fay-Sholes Co.—by the use of the names and designations, Remington-Sholes Company, Remington-Sholes and Rem-Sho in their business and in their advertising media and upon their machines, inaugurated an unfair and inequitable competition and thereby invaded the rights of appellee.**

In the consideration of this branch of the case, we may lay out of sight the suggestion that the name "Remington" is the name of one of the *incorporators* of the Remington-Sholes Typewriter Company and the Remington-Sholes Company, for it has already been shown that this case is to be considered and determined to all intents and purposes, the same as if no one born into the name of Rem-

ington was connected with the *artificial* person, the Remington-Sholes Company.

> R. W. Rogers Co. *v.* Wm. Rogers Mfg. Co., 66 Fed. Rep., 56; S. C., Fed. Rep., 1017; Pillsbury *v.* Pilsbury, etc., Co., 64 Fed. Rep., 841; Garrett & Co. *v.* Garrett, 78 Fed. Rep., 477; Brinsmeed *v.* Brinsmeed, L. R. (1897), 1 Ch., 46; Valentine Meat Juice Co. *v.* Valentine Extract Co., Ld. and others, 1901, 17 Pat. Rep., 673; Peck Bros. & Co. *v.* Peck Bros. Co., 113 Fed. Rep., 291, 302; Bissell, etc., Works *v.* Bissell, etc., Co., 121 Fed. Rep., 357, 367.

In the case at bar, the Court of Appeals speaking through Judge Lacombe, said:

"In the case of a corporation, however, the situation is different. The choice of its name is voluntary; such name is an artificial thing which can be selected by its incorporators from the entire vocabulary of names. In *R. W. Rogers Co.* v. *Wm. Rogers Man Co*, 70 F. R., 1019 this Court enunciated the proposition that "a body of associates who organize a corporation for manufacturing and selling a particular product are not lawfully entitled to employ as their corporate name in that business the name of one of their number when it appears that such name has been intentionally selected in order to compete with an established concern of the same name engaged in similar business, and divert the latter's trade to themselves by confusing the identity of the products of both, and leading purchasers to buy those of one for those of the other. * * * The corporators chose the name unnecessarily, and, having done so for the purpose of unfair competition, cannot be permitted to use it to the injury of the complainant. Other Courts have laid down substantially the same doctrine—*Higgins Co.* v. *Higgins Soap Co.*, 144 N. Y., 462; *De Long* v. *De Long Co.*, 89 Hun, 399; *Garret* v.

*T. H. Garrett & Co.*, 78 F. R., 472; *LePage Co.* v. *Russia Cement Co.*, 51 F. R., 941; *Clark Thread Co.* v. *Armitage*, 67 F. R., 896; *Valentine Meat Juice Co.* v. *Valentine Extract Co.*, 17 Patent & Trade Mark cases, 673. Moreover, the incorporator who elects to transfer his own name for business purposes to an artificial person other than himself is taking an affirmative step in the direction of promoting unnecessary confusion, instead of taking precautions to prevent it."

It will be observed that the excerpt quoted by the learned Judge, from the Rogers Case, is found in the opinion of Judge Wallace in that case.

**Moreover, as against the appellants the right of appellee to be protected in the use of the name "Remington" is generic.** There is no "state of the art," if the common law does not exclude that expression. Appellee's right is generic as in the case of "Higgins' Soap," "Baker's Chocolate," "Heinisch's Shears," "Mumm's Champagne," "The Delineator," "Valentine's Meat Juice," "Clark's Spool Cotton," "Garrett's Snuff" and other instances which are the subject of authoritative adjudication.

> Charles S. Higgins *v.* Higgins Soap Co., 144 N. Y., 463; Walter Baker & Co., Ld. *v.* Saunders, 80 Fed. Rep., 889; P. Heinisch's Sons *v.* Boker, 86 Fed. Rep., 765; Von Mumm *v.* Whittemann, 85 Fed. Rep., 966; Butterick Co. *v.* Standard Fashion Co., N. Y. S. C. (reported in New York Law Journal March 21, 1898); Valentine Meat Juice Co. *v.* Valentine Extract Co., Ld. *supra;* Clark Thread Co. *v.* Armitage, 78 Fed. Rep., 936.
>
> Garrett *v.* Garrett & Co., 78 Fed. Rep., 472, 475, 479.

In all these cases, and others which are not less in point, the decision depended upon the proposition

that the complainant was entitled to be protected in a broadly inclusive use of the name which it sought to protect and the good will which the name symbolized. *The appellee's right to the use of the designation "Remington," being generic and exclusive as against appellants, it is axiomatically plain that the specific or qualified use of the designation, Remington-Sholes, constituted an infringement of appellee's rights.*

In its answer in this case, the Howe Scale Co. alleges that prior to and up to the year 1897, the writing machines manufactured by the Remington-Sholes Company, *and by Fay while he was Trustee*, were designated and marked "Remington-Sholes."

R., p. 23.

Its principal's predecessor, which manufactured the machines, was styled the "Remington-Sholes Typewriter Company."

R., pp. 21, 22.

On the *Re-organization* of the business of the so-called Remington-Sholes Typewriter Company, in 1897, the word "Typewriter" was dropped from its *corporate* title, and the name "Remington Sholes Company" was taken.

R., p. 24.

This slight change in the corporate title was of no consequence, in so far as the public was concerned, and for the purposes of this case, it may be regarded the same as if the word "typewriter" were written into the corporate name and its designation were "Remington-Sholes Typewriter Company."

Higgins Co. *v.* Higgins Soap Co., 144 N. Y., 462, 471.

## USE OF ABBREVIATED NAME.

In 1897, after the Remington-Sholes Company was organized, it used the *abbreviated name* "*Rem-Sho*" in connection with its machine, and in its advertising media, but in all cases the corporate designation, "Remington-Sholes Company," was *inseparably associated with, and used in connection with this abbreviated name, and showed that it was an abbreiation of* "*Remington-Sholes.*" That is a shortened form of that hyphenated name, obtained by the omission of syllables from the end of the words.

R., pp. 1031, 1032, 1082, 1093, 1097, 1104, 1114, 1124, 1162, 1163, 1181, 1182, 1189, 1193, 1248, 1249, 1250, 1255, 1256, 1276, 1278. See also 1445; Bouvier's Law Dic., p. 9.

The *abbreviation* "Rem-Sho" was first used as a *telegraphic code address* by the "Remington-Sholes Typewriter Company," in or about August, 1895, and such use was continued until July, 1897. After that time it is alleged to have been used in connection with the machines of Remington-Sholes Co.

R., pp. 1352, 1353.

The term "Rem-Sho" was used *as a mere abbreviation* of the name "Remington-Sholes," and was so understood by the public, and by purchasers and users of typewriting machines.

R., pp. 1044, 1081, 1093, 1124, 1212, 1219, 1220, 1225, 1230, 1236, 1240, 1258, 1333. R., pp. 524, 530, 564.

Appellants agents and dealers designated the machines as the "Remington-Sholes,"

R., pp. 882, 883, 884, 885, 893, 896, 898, 978, 979, 983, 986. R., pp. 1460, 1464, 1465.

Appellants witnesses admit that it was often designated the "Remington-Sholes," or "Remington-Sholes Typewriter."

R., pp. 1044, 1064, 1096, 1117, 1127, 1134, 1213, 1220, 1252, 1256, 1261, 1270, 1272, 1273, 1307.

The *answer* of the appellant, Howe Scale Co., is *conclusive* of the question now under discussion, and we quote therefrom, as follows:

**"But respondent admits that said Remington-Sholes Company and this respondent have advertised the typewriter manufactured by said Remington-Sholes Company and sold by this respondent as its agent, as 'Remington-Sholes' typewriters and as 'Rem-Sho' typewriters, as they had a lawful right to do. * * *"**

R., pp. 27, fol. 81.

From this admission it is manifest that the writing machines manufactured by the Remington-Sholes Company, and sold by the agent, Howe Scale Company, had been advertised and made known to the public both as "*Remington-Sholes*" typewriters, and as "Rem-Sho" typewriters. That is to say, those designations hadbeen used *synonymously*, and it was, therefore, of no sort of consequence which was used, since it was known to the public that "Rem-Sho" *was merely an abbreviated or shortened form* of the hyphenated name "Remington-Sholes."

Inasmuch as these terms were used *synonymously* for the purpose of reaching a conclusion in respect of *infringement*, we may *disregard the abbreviated term "Rem-Sho,"* and direct the attention of the Court, mainly, to the words or designation, "Remington-Sholes."

Postulating that the name *Remington* is lawfully and *generically appellee's trade-name and trade-mark and points to and indicates its business and product*, the question presented is whether or no

the means employed by the appellants and the designations used by them exposed the ordinary unwary purchaser to mistake appellants' machines for appellee's. Whether they tended to divert from appellee and attract to the appellants, the legitimate trade that belonged to the former, and whether the use of the name "Remington-Sholes" as it was employed, was not an unlawful invasion of the rights of appellee and calculated to injure its business.

Pilsbury *v.* Pillsbury-Washburn Flour Mills Co., 64 Fed. Rep., 841, 846.

It has hitherto been shown that the designation used by the appellants and by their agents and dealers was calculated not only to mislead the unwary or unsuspecting purchaser to mistake appellants' machines for appellee's, but that it actually did mislead ordinary purchasers, obtaining or purchasing typewriting machines in the circumstances and under the conditions which generally prevail in the typewriter trade. Moreover, *it is never to be forgotten*, in this case, that from the beginning appellants knew and proceeded upon the assumption that the use of the name "Remington-Sholes," both in the *corporate* name of the Remington-Sholes Co., and upon its machines, *was of doubtful propriety*, and that they had sought to escape liability for infringement by cautioning their agents and dealers not to confuse their corporate name and machines with appellee's business and product, and to take care that purchasers should not be misled, *thereby admitting that purchasers were liable to be misled in the premises.*

On appellants' own admissions, statements and conduct, and that of their agents and dealers, we submit that the *corporate* name, "Remington-Sholes Company," and the *designations*, "Remington-Sholes," and "Rem-Sho" used in connection with appellants' machines, were calculated to create *confusion* in business and to *mislead* purchasers of writing machines to the injury of appellee.

Appellee's witness, **Platt,** who had an extensive observation and experience in the sale of appellants' machines, found that the names "Remington-Sholes," and "Rem-Sho," *created in the minds of the public a decided impression that it was a Remington machine and was the product of appellee.*

R., pp. 145, 146, 147.

**F. Lyman Brown,** a dealer in typewriters, of large experience, stated that the "Remington-Sholes" typewriter could readily be palmed off as and for the complainant's machine to persons not knowing the difference between the "Remington" and other makes.

R., pp. 448, 449.

Appellee's witness, **Crandall,** said that it was the *exception* that the *buyer* of a typewriter possessed any information *in detail* whatever of the machine. He scarcely had more than a very general idea of the form of a writing machine. That it was the *rule* in the *larger cities* that the *business-man* did not examine the typewriter he bought.

R., p. 544.

**Crean** said: "It is an exceedingly *unusual* thing for the *purchaser* of a typewriter to inquire to any great extent into its *mechanical* construction. They are often guided very largely by a preference which they have for certain makes of writing machines, and I should say that the *name* of the machine *and the reputation which that name carries with it,* is what influences *most purchasers* toward a particular machine.' '

R., p. 594.

To the same effect is the evidence of appellee's witness, **McClain,** pp. 606, 607.

It will thus be seen, from the evidence of the witnesses above referred to, and from that of others in the Record to the same effect, *under what circum-*

*stances and conditions writing machines are bought and sold, and the class of persons who purchase them.* Now the rule is well settled that the purchaser is required only to use that care which persons ordinarily exercise under like circumstances, **and that "the imitation need only be slight if it attaches to what is most salient; for the usual inattention of a purchaser renders a good will precarious if exposed to imposition."**

Pillsbury *v.* Flour Mill's Co., *ubi supra.*
Stuart *v.* Stewart Co., 91 Fed. Rep., 245, 246.

It is perfectly plain that the designation "Remington-Sholes," employed by the appellants contained appellee's trade-name and designation, "Remington," *and that the name "Remington" is "what is most salient," in both trade designations. "The main idea left on the mind" of the prospective* purchaser was "*Remington*"—a name of world-wide repute.

**Similarity, not identity, is the usual course when a party seeks to benefit himself by the good name of another.**

Celluloid Mfg. Co. v. Cellonite Mfg. Co., 32 Fed. Rep., 97.

In Carroll *v.* Ertheiler, 1 Fed. Rep., 688, the controversy was over the name "Lone Jack" as applied to smoking tobacco. Butler, *J.*, says (p. 691): "The defendant's application of this name to his smoking tobacco is an adoption and use of the **essential part** of the plaintiff's trade-mark."

**"Surrounding it with a different device signifies nothing to the public, who attach no importance to the device of the plaintiff.** The defendant's name upon the cigarette if recognized (and it would not be without close inspection), would not inform the public that the tobacco is not of the plaintiff's manufacture."

In Amoskeag Mfg. Co. *v.* Spear, 2d Sandf., 599 (a leading case in this country), Judge Duer, said (pp. 607, 608): "It is evident, however, that in order to convey a false impression to the mind of the public as to the true origin or manufacture of goods, it is not necessary that the imitation of an original trade-mark shall be exact or perfect. It may be limited and partial. It may embrace variations that a comparison with the original would instantly disclose, yet a resemblance may still exist that was designed to mislead the public, and the effect intended may have been produced * * * *. In an imitation of the original mark upon an article of goods of the same description, the name of the proprietor may be omitted. Another name, that of imitator himself, may be substituted, *but if the peculiar device is copied, and so copied as to manifest a design of misleading the public, the omission or variation ought to be wholly disregarded. Its object, we may be sure, was not to communicate the truth, but to escape the penalty of falsehood; a fraud is intended, an unlawful gain is meant to be realized, but it is believed or hoped that an injunction may be avoided and a claim for profits or damages be repelled.* The fraud, however, if a court of equity is true to its principles, will be suppressed and its fruits be intercepted or restored."

In Seixo *v.* Provozende, 1 Ch. App., 192, it was said by Lord Justice Brett, that "if the goods of a manufacturer have, from the mark or device he has used, *become known in the market by a particular name*, I think that the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market, may be as much a violation of the rights of that rival as the actual copy of his device."

To the same effect:

Bissell, etc., *v.* Bissell, etc., 121 Fed. Rep., 366.

**Furthermore, since appellants appropriated the material and essential part of appellee's trade-name and trade-mark, the burden is upon them to disprove the probability of deception, and not upon appellee to prove it.**

Ford *v.* Foster, L. R. 7 Ch., 611; Orr-Ewing *v.* Johnston & Co., 13 Ch. D., 434; Sebastian on the Law of Trade-marks (4th Ed.), p. 124; Kerly on Trade-marks, pp. 372, 373.

Whether the trade-name and designation of the appellee be regarded as "Remington," or "Remington Standard," it is perfectly obvious that appellants' designation, "Remington-Sholes," contained the *essential and material part* of the appellee's trade-name, to wit: **"Remington."**

In the latter case we would have, for comparison,

**REMINGTON STANDARD TYPEWRITER.**
**REMINGTON-SHOLES TYPEWRITER.**

While these designations are not *identical* they are *similar*, and would be likely to mislead the ordinary purchaser of writing machines.

The name "Sholes" had no repute in the typewriter trade, or among purchasers and users of writing machines at the time it was selected by the Remington-Sholes Company and its predecessor, except and in so far as it had been previously associated with appellee's predecessor's machines. If it be asserted that it had repute in the trade, then the evidence in this case shows that such repute was due to association with appellee's predecessor's machines and business and rightfully belongs to appellee and not to appellants.

But the name "Remington" then was, and now is, *one of world-wide repute*, and was known to be of great value in the typewriter trade at the time it was selected, and the *persistency* with which appellants have clung to this name is persuasive evi-

dence of its importance and value, in the minds of appellants.

In collocating the designation Remington-Sholes, it will be observed *that the name "Remington" was placed first, and the word "Sholes" afterward;* that is to say, *that which was most salient and would first catch the eye and strike the ear was given precedence.* The reason therefor is obvious.

The evidence of appellee's witnesses, Stallwood and Weingart, and that of others, demonstrate the fact that *the name Remington was the salient and controlling word or factor used in appellants' corporate name and in connection with its product.* The statements of Fay to Browne and to Sholes, hitherto referred to, show that he regarded the word "*Remington*" as the *valuable part* of the hyphenated name. The name Remington at that time had been associated with appellee's business for many years, *and hundreds of thousands of dollars had been expended in advertising it and making it known in all parts of the civilized world,* while the name "Sholes" had not theretofore been employed, except for a short time at the inception of appellee's predecessor's business.

We have hitherto shown that appellee's right to the use of the designation Remington was and is exclusive, as against appellants, and it, therefore, follows that *the specific or qualified use of that designation constituted an infringement of appellee's rights.* In the present instance, there is no doubt that appellants' machine was a "Remington machine" of a particular kind. It was a machine of the *genus* "Remington," and of the *species* "Sholes." If *Sholes* had introduced a machine and designated it "Sholes-Remington," it is axiomatically plain that there would have been a right of action against him to restrain the use of the word "Remington" in connection with the word "Sholes." For the same reason, the use by the *artificial* person, "Remington-Sholes Company,"

of the designation "Remington-Sholes" was actionable.

This doctrine as to the right of a person who has popularized a name to be protected against its use, in connection with other words or names, is illustrated in many cases. The citation of a few authorities will suffice.

> Anheuser-Busch Brewing Assn. *v.* Piza, 24 Fed. Rep., 149. Congress, etc. Spring Co. *v.* High Rock, etc., Spring Co. 45 N. Y., 291. City of Carlsbad *v.* Kutnow. 71 Fed. Rep., 168. Apolinaris Co. *v.* Norrish, 33 L. T. N. S., 242. Cochrane *v.* MacNish, L. R. A. C., 231. Fuller *v.* Huff, 104 Fed. Rep., 141. Saxlehner *v.* Eisner, etc. Co., 179 U. S., 19, 33.

Appellants' use of the word "Remington" was more significant than if it had been preceded by the name Sholes in the possessive, so as to have read "Sholes-Remington." The word "Sholes" can be understood only as giving a specific meaning to the word which it qualifies. *To say that Sholes is the noun and Remington the adjective is to admit that there is an arbitrary, unnecessary and fraudulent use of the word Remington.* Obviously the name Remington was selected for the purpose of diverting and appropriating a portion of the good will associated with that name, *and thereby reaping a pecuniary profit, and not to give a distinctive individuality to the new machine.* The intent was to get the benefit of appellee's reputation which was then world-wide. The machine then had a name, to wit: **"The Z. G. Sholes,"** which was that of the inventor. But that was a *new* name in the typewriter trade, and to purchasers and users of writing machines. There was no good will or reputation associated with that name, and it would not attract the public. **With appellee's machine everywhere in use and known by the name Reming-**

**ton, and with words beyond number from which to select, if the name "The Z. G. Sholes," already selected, was not satisfactory, the new aspirant for recognition singled out the name of the old machine and applied it to the new construction and made the old name a part of the corporate name of the new concern.** In the language of Mr. Justice Bradley, hitherto quoted, "It will take a great deal of explanation to convince any man of ordinary business experience that this name was not adopted for the purpose of imitating that of the old successful company."

(32 Fed. Rep., 97.)

The case of Fuller *v.* Huff (104 Fed. Rep., 141) is in many respects closely analogous to the case at bar. In that action, Judge Shipmen speaking for the Circuit Court of Appeals said: "The question, therefore, is, is the *real* defendant's use (for it is manifest that the Michigan corporation is the real defendant) of the words 'Health Food Company,' in connection with the words used as a *prefix* and *suffix*, such a use as is likely to deceive consumers into the belief that they were buying the complainant's goods? It is to be observed that the frequent insignia of an intent to deceive, namely, the copy or the imitation, more or less close, of the dress of the competitor's packages, are absent in this case; but if a trade-name has been so identified with the business of a manufacturer as to inform the public that the name upon goods means that they are the product of that person and another subsequently adopts and displays the name, *it is not material that he has not also adopted the particular dress in which his predecessor has presented his goods.* Hier *v.* Abrahams, 82 N. Y., 519."

The learned Judge, after referring to the *long use* of the words "Health Food Company" by the plaintiff, and the subsequent adoption thereof in connection with *prefixes* and *suffixes* by the defend-

ant's principal, observes: "'The defendant now so coveted the name as to determine not to relinquish it, and continued its use despite remonstrance. The benefit to the corporation was derived from the familiarity with the name on the part of that portion of the public which used this class of goods. * * * *The question in this case is, however, whether the simple use of the name, although with prefixes or suffixes, is not 'likely to deceive purchasers.'* The history is significant in regard both to the motive of the Michigan corporation in retaining its occupancy of the name and the probable effect of a permanent retention. After it had presented its goods to the public for use under the name 'Sanitarium Foods' and 'Invalid foods,' *there was no necessity for an abandonment of the former names* under which it had confessedly obtained success and by which it was well and favorably known by its customers. The adherence to the new name to the extent of guarantying productions to its purchasers against suits, indicates the pecuniary benefit which was expected to ensue from the adoption of a name to which customers had long been accustomed, and the persistence in the use also indicates the pecuniary injury which was liable to come upon the complainant. The case is not one where the Michigan corporation must use to a certain extent the name of the complainant, and it is not, therefore, one of *damnum absque injuria.*

"It is the case of an *unnecessary* use of a name long previously used by another in the same business, and in the recent decisions, by courts of last resort, upon the right to the use of trade names, although geographical or descriptive in their primary meaning, great importance is given to mere long continued and exclusive priority of use. North Cheshire and M. Brewery Co. *v.* Manchester Brewery Co. *supra;* American Waltham Watch Co. *v.* United States Watch Co. *supra.* It was not necessary for the complainant to attempt to discover whether a purchaser had been actually deceived,

for a manifest liability to deception exists. Taendsticksfabriks Akticbolagat Vulcan *v.* Myers, 139 N. Y., 364; 34 N. E., 904; Manufacturing Co. *v.* Trainer, 101 N. S., 61; 25 L. Ed., 993; Biscuit Co. *v.* Baker (C. C.), 95 Fed., 135. Although the intent of the defendant's principal when it commenced to use the name 'Health Food' may have been innocent, the continuance after it had learned of the complainant's prior use, indicates its deliberate intention to use the name without reference to the complainant's prior rights. Orr *v.* Johnston 13 Ch. Div., 434."

In the case at bar appellee and its predecessors had used the name "Remington" and "Remington Typewriter," etc., for many years before the Remington-Sholes Typewriter Co. assumed it; had acquired an extensive business under it; had established agencies for their machines in all the principal cities and towns of the United States and in nearly all other parts of the civilized world. In fine appellee and its machine had acquired a world-wide reputation. The model machine of appellants' was named for the inventor thereof—"**The Z. G. Sholes**"—which was the *natural* and an appropriate name for the machine. A company was, also, organized under the name, **The Z. G. Sholes Company,** to manufacture machines similar to the model. The machine, therefore, had an appropriate name and under that name, the promoters of the Remington-Sholes Typewriter Company sought to sell it and the inventions therein embodied to appellee and to other parties. Failing in this, in the fall of 1893, they conceived the *scheme* of changing the name of the machine from **"The Z. G. Sholes"** to "Remington-Sholes," and organized another corporation under a new name "Remington-Sholes Typewriter Company," which was later *re-organized* as "Remington-Sholes Company." The reason for the change of name of the model machine from **"The Z. G. Sholes"** and the abandonment of the corporate name **"The Z. G. Sholes Company,"** for "Remington-Sholes

Typewriter Company" was to surreptitiously obtain the benefit of the reputation of name "Remington," long and prominently used by appellee and its predecessors. The Remington-Sholes Company and its predecessors so coveted the name as to determine not to relinquish it, and continued its use despite remonstrances. The benefit to the corporations, "Remington-Sholes Typewriter Company" and "Remington-Sholes Company," was derived from the familiarity with the name "Remington" and "Remington Typewriter" on the part of that portion of the public, which used this class of goods, The history is significant in regard both to the motive of the Illinois corporations in retaining the name and the probable effect of a permanent retention. The machine having the name **"The Z. G Sholes,"** and the Wisconsin corporation, a similar name under which the business could have been carried on, *and the company and its product given a distinct individuality, there was no necessity for an abandonment of those names and the selection and adoption of the name "Remington."* The adherence to the *new* name, "Remington-Sholes," *to the extent of guaranteeing and defending the "Howe Scale Company" in this suit,* indicates the pecuniary benefit which was expected to ensue from the adoption of a name to which purchasers and users had long been accustomed, and the persistence in the use thereof also indicates the pecuniary injury which was liable to come upon appellee. *It is the case of an unnecessary use of a name long previously used by appellee and its predecessors in the typewriter business,* and whilst it was not necessary for the appellee to attempt to discover whether a purchaser had been *actually* deceived, for a manifest liability to deception existed, nevertheless *appellee has shown confusion in business and actual deception in consequence of appellants' use of the designations "Remington-Sholes" and "Rem-Sho."* Admitting for argument's sake that the intent of appellants when they commenced

to use the name "Remington" was innocent, the continuance after they had learned of appellee's prior use, which was clearly established in this case, indicated his deliberate intention to use the name without reference to appellee's prior rights.

As proof of their motive and intent and that they regarded the name "Remington" as *the salient and important part* of the corporate name "Remington-Sholes Co." and the designation of their machine, we again remind the Court of the oft-repeated statement of their agents and dealers, which was set forth in their advertisements, that appellants' machine was the "only typewriter manufactured to-day by a **Remington.** Strong, reliable and accurate, it represents the **second generation** of typewriter manufacturers bearing **this great name.**"

In Croft *v.* Day (7 Beav., 84) it was remarked by Lord Langdale, M. R., that two things were necessary for the accomplishment of a fraud such as was there contemplated: "First, there must be such a general resemblance of the forms, words, symbols and accompaniments as to mislead the public; and secondly, *a sufficient distinctive individuality must be preserved*, so as to procure for the person himself, the benefit of that deception, which the general resemblance was calculated to produce. *To have a copy of the thing would not do*, for, though it might mislead the public in one respect, it would lead them back to the place where they were to get the genuine article, an imitation of which was improperly sought to be sold. **For the accomplishment of such a fraud, it is necessary in the first instance to mislead the public, and in the next place, to secure a benefit to the party practicing the deception by preserving his own individuality.**"

What was wanted, by appellants and the promoters of the Remington-Sholes Co. and its predecessor, was a designation which had sufficient resemblance to appellee's trade-name, to *mislead* the public, and still had *a sufficient distinctive indi-*

*viduality* to procure for them *the benefit of the deception*, which the general resemblance between the names was calculated to produce. To have taken the name "Remington" *alone* would have led the public to the place where they would obtain the *genuine* article, whereas by annexing or adding to it the word "Sholes," appellants secured the benefit of the deception, the purpose of which was to divert and displace the good will of appellee's business. In other words, the purpose of appellants and of the promoters of the Remington-Sholes Typewriter Co. was not to *differentiate* the machines, *but to simulate a resemblance* to appellee's name, sufficiently near *to mislead the purchaser and containing variations to argue about*, should they be brought into court. *This is the usual artifice of the unfair trader.*

Collinsplatt *v.* Finlayson, 88 Fed. Rep., 693; National Biscuit Co. *v.* Baker, 95 Fed. Rep., 135.

As hitherto said, the *suffix*, "Sholes" would either make no impression upon the ordinary purchaser's mind, or it would lead him to believe that appellant's machine was a *new* or *improved* Remington typewriter, manufactured by appellee or that, as the witness Weingart said, "it was one of the kinds of machines the Remingtons manufactured." The ordinary purchaser might infer and believe that the so-called "Remington-Sholes Typewriter" was being made by the same, or a branch of the same concern that manufactured the "Remington" machines, and that the name "Sholes" was the name of a person who had made some improvements in the machines, and, therefore, his name had been used in connection with the old name Remington; or in other words that appellants' machine was an *improved* Remington Typewriter.

R., pp. 264, 265.

Furthermore the name "Remington-Sholes Co." would be likely to induce the belief in the mind of the public that a corporation had been formed by an amalgamation or consolidation of appellee, generally known as the "Remington Typewriter Company" and "Remington Company," with a concern by the name of "Sholes," *and that appellee had ceased to have a separate existence.*

> Manchester Brewing Co. *v.* North Cheshire & Manchester Brewing Co. (1898), 1 Ch., 539.

The name "Remington Sholes Co." would then be regarded as the name of a *new* corporation, composed of the amalgamated concerns, and its product as the "Remington-Sholes" typewriter.

So, also, the name "Remington-Sholes" might lead prospective purchasers to suppose that there was *a connection* between appellee's business and machines and appellants.

It may be conceded for the purposes of argument that when the Remington-Sholes machine was put upon the market by the manufacturers it was not represented to be a "Remington machine." The material inquiry, however, is whether it might not have been offered and sold (as it was) by a dealer of *elastic* conscience as and for a "Remington machine." In the words of the Court of Appeals for the Seventh Circuit (Pillsbury case above cited): Did the name "Remington," as used by appellants, "render a good will precarious?" Was it possible for a dealer having the "Remington-Sholes machine" in stock to so use the name "Remington," which appeared upon the machines, and in all advertisements thereof, as to divert or displace an order for a "Remington machine?" It was said in another case: "It is my decided opinion, confirmed by reflection, that although 'Apenta' could not be passed off as 'Hunyadi' without fraud or gross ignorance on the part of the retail dealer, yet the name on the label, combined with the adver-

tisements, places an instrument of deception in his hands, and, that if he happened to have only 'Apenta' in stock, he might by that means be enabled to supply it instead of and as being identical with 'Hunyadi.' That is enough. *The law is intended to reach, and many authorities show that it does reach not only those who themselves deceive, but also those who enable others to deceive the purchasing public.*"

Saxlehner *v.* Apollinaris Co., L. R., 1897; 1 C. Div., 893.

But whilst it was sufficient for appellee to show a *probability* of deception, we need not rest our argument upon the proposition that the names and designations used by appellants were calculated to mislead the ordinary purchaser of writing machines, *because it was proven in this case that such purchasers were actually deceived.*

Inasmuch as the typewriter of appellants' was marketed in this country, and exported to and sold in foreign countries, in competition with appellee's, this Court will consider the question whether or no the designations "Remington-Sholes" and "Rem-Sho" were calculated to confuse and mislead those persons, who were likely to become purchasers of the machines in any markets where they were sold. To the appellants' contention that the names "Remington-Sholes" and "Rem-Sho" were not calculated or likely to mislead the *ultimate* purchaser, there is one sufficient answer—the historical answer of fact—that the public and purchasers were misled and deceived, and took the appellants' machines as and for the appellee's.

## MARKETS NOT LOCAL BUT WORLD-WIDE.

In determining the question whether or no the *ultimate* purchaser is likely to be misled by the use of the name "Remington" in connection with the defendant's business and machines, the remarks of Judge Putnam in the case of Le Page Co. *v.* Russia Cement Co. (51 Fed. Rep., pp. 941, 944, *et. seq.*), are applicable to and of force in the case at bar. He there said: "The products of the Russia Cement Co. are sold to customers and sub-customers throughout the United States, to more than $60,000 annually, and necessarily, on account of their very peculiar character, go into the hands, first and last, of many hundreds of thousands of persons, nearly all ignorant of the circumstances connected with their origin, except what is suggested by the word 'Le Page.' This was the condition of things in existence, or contemplated, when Le Page surrendered his interest in the Russia Cement Co., and, therefore, must be taken into consideration by the Court in determining the rights of the parties. On the other hand, the products of the Le Page Co. of the same general character, have been scattered in the same way, to the extent of over $50,000 annually to innumerable persons, who were necessarily likewise ignorant of their true origin. *The difference is between dealing with a local community understanding all the circumstances, and dealing with the great public scattered throughout the United States, with no opportunities of information, except what is communicated to them by the word 'Le Page' in combination with the word 'Glue.'*"

> To the same effect: Johnston *v.* Orr-Ewing, 7 App. Cas., 219, 225 (1882). Reddaway *v.* Banham (1896), App. Cas., 219.

In this case the proofs show that the machines were sold and used in all parts of the civilized world, and hence in determining the question whether or no the use of the name "Remington," by the ap-

pellants, was likely to create confusion and mislead the public, the Court must bear in mind that we are not dealing with "a *local* community understanding all the circumstances," but are "dealing with the great public scattered throughout" the civilized world, with no opportunities of information, except what was communicated to them by the designations "Remington" typewriter and "Remington-Sholes" typewriter. Abroad, to the Danish and Russian purchaser, "Remington-Sholes" must have meant the "Remington" typewriter.

R., pp. 896, 986.

## THE ABBREVIATED NAME "REM-SHO."

The learned Judge who tried this case in the Circuit Court said: "The long name Remington-Sholes, got shortened into Rem-Sho, in writing and speech in conducting the defendant's business which was well understood to be an abbreviation of the full name. The defendant has put the abbreviation upon the machines in place of the full name; and claims that this, at least, is so different from the name Remington as used by the plaintiff, and its predecessors that it can, and does, not amount to any representation that the machines are Remington machines. If this short name had been the one first used there would be much plausibility in this argument; but following Remington-Sholes as it has in use, it has become a well known short representation of what the long name it stands for represented, and of itself now amounts to a wrongful representation of the source of the defendant's machines.

According to these views the plaintiff appears to be entitled to a decree suppressing the use of the name Remington in the compound name of "Remington-Sholes," and the use of the compound abbreviation of that name upon the defendant's typewriting machines or in the sale thereof."

In the decree entered on the decision of the Circuit Court, the Howe Scale Company was enjoined from using the abbreviation or short term "Rem" as a whole or part of any designation upon or in connection with the sale of typewriting machines. The Court of Appeals for the second circuit held and found that the use of the name "Rem-Sho" was not sufficiently like "Remington" to be by itself a reasonable cause of confusion. In thus deciding and holding it is respectfully submitted that the Court of Appeals erred.

It has hitherto been shown that "Rem" was known to the public as an abbreviation of the name "Remington," *at a period anterior to the organization of the "Remington-Sholes Typewriter Company," that is to say as early as the year 1892.* The appellee's machines have ever since that time been frequently referred to and designated as the "Rem," and "Rem Typewriter." *The public was therefore educated to know and did know at the time the designation "Rem-Sho" was first selected and used by Remington-Sholes Co. that "Rem" meant "Remington," and referred to appellee's writing machines. It was also shown by* both appellee's and appellants' witnesses, that "Rem-Sho" was known as, and understood to be, *merely an abbreviation of the hyphenated names "Remington-Sholes,"* and it was further proven that this abbreviation was always *intimately associated—inseparably associated*—with the hyphenated name "Remington-Sholes." The designation, "Remington-Sholes" appeared in all advertisements and upon all machines, which were manufactured by the Remington-Sholes Company and sold by appellants.

It is a matter of common knowledge that corporate names and trade-names are frequently *abbreviated or shortened* to economize space and time. In the typewriter trade it was common to abbreviate the trade-names of the different makes of writing machines.

R., pp. 135, 190, 207, 1044, 1426.

The public had been educated to know that "Rem" was an *abbreviation* for the name "Remington," long before the "Remington Sholes Company" or its predecessor used it. The name "Remington Sholes" was shortened into "Rem-Sho" to get an abbreviated telegraphic code address for the "Remington-Sholes Typewriter Company."

R., pp. 1353, 1448.

"Rem-Sho" was not put upon the machines until July, 1897. Prior to that time the full designation "Remington-Sholes" was used, and it is alleged by appellants that the machines became known to the public under that name. The *only* change made was to *shorten* the designation of the machine, the abbreviated cable address "Rem-Sho" being substituted for the *full* name. The corporate name "Remington-Sholes Company" was placed on the machines as theretofore. Obviously the machine continued to be designated and spoken of as the "Remington-Sholes typewriter," and "Rem-Sho" was understood to be, as it was, *merely an abbreviation* of the full name, which always accompanied "Rem-Sho" upon the machines and in all advertising media. Inasmuch as the abbreviation "Rem" was used, more or less, as a designation for appellee's machines, prior to the adoption and use of it by the "Remington-Sholes Company" and its predecessor, it is plain that "Rem" could not be appropriated by appellants' any more than the name "Remington," for which it stood.

The designation "Rem-Sho" was in use *prior* to 1897, and *stood for and meant "Remington-Sholes." It had a definite and well understood meaning*, as appears by the evidence in this case, *and hence it was not, to the mind of the public, a fanciful or meaningless term or designation*, as hitherto asserted by appellants' counsel. Moreover, in *foreign* countries, as well as in *this* country, appellants' machines continued to be, by agents and dealers,

advertised and referred to as "Remington-Sholes" typewriters.

R., pp. 869, 882, 883, 884 888, 893, 896, 898, 900, 908, 909, 957, 958, 975, 976, 977, 978, 979, 983, 986.

Inasmuch as the typewriter of appellants' ◆◆ was marketed in this country and exported and sold in foreign countries, in competition with appellee's, this Court will consider the question whether or no the designations "Remington-Sholes" and "Rem-Sho" were calculated to confuse and mislead those persons, who were likely to become purchasers of the machines in any markets where they were sold. To the appellants' contention that the names "Remington-Sholes" and "Rem-Sho" were not calculated or likely to mislead the *ultimate* purchaser, there is one sufficient answer—the historical answer of fact—that the public and purchasers were misled and deceived, and took the appellants' machines as and for the appellee's.

The use of the abbreviation "Rem-Sho" was *inequitable*, as being constructively an "*unecessary*" and improper use of the name "Remington," and whether the machines of appellants went into the market as "Remington-Sholes" or Remington-Sholes Co.'s "Rem-Sho," these designations were regarded as synonymous, and to the ordinary purchaser implied the original manufacture—a "Remington" machine. It, therefore, results that appellee's right of action included the use of the *abbreviated form of expression* by which the name "Remington" was made to be of value for evil in carrying on an unfair competition. There was the same unfair and disengenuous use of the name "Remington" under a different kind of a disguise.

Valentine Meat Juice Co. *v.* Valentine Extract Co., Ld. and others, 17 Pat. Rep., 673; Amoskeag Mfg. Co. *v.* Garner, 54 Howard's Prac. Rep. (N. Y.), 297, 300.

In both of the cases last above cited, the abbreviations were enjoined. In the first case, the abbreviation was "Valtine," and in the second one "A. M. Co." In the latter case, the Court observed: "For instance, in view of the evidence in this case, the defendants could no more rightfully call their prints 'A. M. Co. Prints' than they could style them the 'Amoskeag Mfg. Co. Prints,' *because that would still be a representation, less full, pointed and direct, but none the less fraudulent, that the prints were of the plaintiff's production. 'A. M. Co.' is not merely a trade-mark, but a well-known, long used and thoroughly understood abbreviation of the plaintiff's name.*"

## ALLEGED DEFENCES.

*First.*—The appellants allege in their answer and state in their catalogues that by reason of difference in appearance and in construction and mode of operation of its machine from all others upon the market, no intending purchaser, having sufficient intelligence to operate a typewriting machine, could possibly be mistaken into purchasing those manufactured by the "Remington-Sholes Company" and sold by appellants as and for writing machines of appellee's manufacture. In the first place, it is to be noted that appellant's machine was a *shift* machine, printing both capital and small letters; the *platen-carriage* being shifted in appellee's machine, while in appellants the *type-basket* was shifted.

In "Complainant's Exhibit Instructions to Agents by the Howe Scale Co." (R., pp. 874, 881) it is said: "*The Rem-Sho is the only machine made which has the universal or standard Remington keyboard, which 95 per cent. of operators are familiar with.*" * * * * And again: "The escapement on our machine is nothing more than the escapement on the old No. 2 Remington ma-

chines, only in place of operating vertically it operates horizontally. No better escapement was ever gotten up." Thus it will be observed that the Remington-Sholes Co. adopted that style of machine known as the "shift machine," and also adopted and used the "Standard Remington key board," for the reason that 95 per cent. of operators were familiar with it. It is true that there were some differences in appearance, between appellee's and appellants' machines, but those differences would escape the attention of the ordinary purchaser of writing machines, who is not familiar with *details* of structure, and if he noted them at all, would be led to suppose that *the differences simply indicated different models or styles of writing machines made by the same manufacturer.* The proofs in this case show *that purchasers ordinarily* are of that class who are unacquainted with the *physical* characteristics of the machines; that it is the *exception* that the buyer possesses *any information in detail* of the typewriter, and that it is the *rule* in the *larger* cities that the *business man does not even examine* the machine which he purchases. *Moreover in this country, very few buyers are operators.*

A large class of purchasers, therefore, buy the machines with no information except what is communicated to them by the word "Remington" in connection with the word "typewriter." The purchaser "is not bound to study or reflect." "He acts upon the moment." "He is without opportunity of comparison." *He relies upon the name and repute of the machine.* These facts, in connection with the further fact that the market is not *local* but world-wide, must be taken into account by the court. The contention of appellants that their machines were in finish and outward appearance unlike appellee's, and therefore, that the public and purchasers of typewriting machines could not be misled was, practically, abandoned and not

regarded as of force in this case, because the proofs show that the appellants put upon the market writing machines, which *in external appearance, finish and design* much more nearly resembled the machines of appellee than those first manufactured and sold. *The machines were japanned in black, and were designated the No. 6 "Remington-Sholes" or "Rem-Sho."*

The attention of the court is, also, called to the fact that appellee's "Remington No. 6 machine," was and is the one principally sold and used in this country. Either appellants did not regard *the mere external appearance and finish of their machines* as of any consequence, in so far as *the question of infringement* was concerned, or else they grew bolder and their desire for gain induced them *to closely simulate the design and finish of appellee's machines*, and to designate their *new* model the "Remington-Sholes" (Rem-Sho) No. 6. It will be observed that in one case it was the "Remington No. 6" and in the other the "Remington-Sholes," or "Rem-Sho No. 6."

Moreover, this gradual approximation of "get up" and description to appellee's product, was a badge of fraud; nor is it an answer to say that japanning typewriters in black, or designating them by numbers was common to the trade when they were used in connection with appellee's trade name "Remington."

Lever *v.* Goodwin, 36 C. D., 1.,

But conceding, for argument's sake, that appellee's and appellants' machines were somewhat different in finish and external appearance, nevertheless the trade-name and designation "Remington" had been so long and exclusively identified with the business of appellee, as to inform the public that that name upon writing machines meant that they were its product, and since appellant adopted and used that name, it was not material that their machines had

not also the *particular* design and finish in which appellee's typewriters were presented to the public.

> Fuller *v.* Huff, 104 Fed. Rep., 141; Hier *v.* Abrahams, 82 N. Y., 519; Le Page Co. *v.* Russia Cement Co., 51 Fed. Rep., 941, 945.

In the case last cited, the Court aptly said: "*The essential thing* is its (plaintiff's) right to inform the public that it is in the exclusive possession of all the advantages coming to it as the legitimate *successor* of the original formulator of 'Le Page's glue,' and is alone entitled to put on the market that product, supposed to be composed or manufactured with special skill, and known to come from the original and long established concern."

In the Higgins case it appeared that the labels on the manufactured articles of the respective parties were entirely different. One used a ~~big~~ *bright yellow* label and the other a *blue* one. The distinctive word "German" which plaintiff used on its product was absent from defendant's label.

> Chas. S. Higgins Co. *v.* Higgins Soap Co., 71 Hun, 101; S. C., 24 N. Y. Supp., 801, 802.

In the Valentine Case (83 L. T. N. S., 271) the packages were dissimilar, the plaintiffs being a meat juice in liquid form and the defendants preparation was put up in the form of meat globules.

*Second.*—The appellants allege that it was the practice of ~~its principal~~, "Remington-Sholes Company," to mark its machines with the words "Remington-Sholes" and with the word Chicago; that it had used those words in its advertisements, etc., and thereby its machines had become distinctively known, and were differentiated by the public from those of appellee's manufacture. Now, while appellants' proofs show that the words "Remington-

Sholes" and the word "Chicago" always appeared on its machines, and in its advertisements, there is no proof that the purchasing public thus recognized or differentiated its machines from appellee's. In the first place, it is to be observed that the hyphenated name "Remington-Sholes," which is alleged to have been stamped upon all machines and to have appeared in appellants' advertising media, are *the very words here in controversy*, that is to say, they contain appellee's trade-name and designation "Remington," combined with the suffix "Sholes." *This is, therefore, not the case of a manufacturer bearing a non-infringing name*, who stamps it on his goods, *but it is one where both the designation of the goods and the manufacturer's name stamped thereon* are alleged to infringe upon appellee's rights. In other words the stamping of the *corporate name*—"Remington-Sholes Company"—upon the machines was *an aggravation and not a justification*. **Both names indicated Remington connection, and implied the original manufacture.**

In Menendez *v.* Holt, 128 U. S., 514, the Court held that the use of the defendant's name in its advertisements did not tend to rebut the proof of fraud; and that if the ordinary purchaser would be deceived by the designation employed, defendant must be debarred from using it.

In that case this Court said: "Holt & Co., then having acquired the exclusive right to the words 'La Favorita' as applied to this particular vendable commodity, it is no answer to their action to say that there was no invasion of that right because the name of S. O. Rider accompanied the brand upon flour sold by the appellants instead of the name of Holt & Co. That is an aggravation and not a justification, for it is openly trading in the name of another upon the reputation acquired by the device of the true proprietor."

To the same effects are Powell *v.* Birmingham V. B. Co. (1894), Ch. 449 (1896), 2 Ch. 82; Eno *v.* Dunn, 15 App. Cas., 252 (H. of L., 1890); Montgo-

mery *v.* Thompson, 64 L. T. R. N. S., 748 (H. of L., 1891); Southern White Lead Co. *v.* Cary, 25 Fed. Rep., 125; Newman *v.* Alvord, 51 N. Y., 189; Carroll *v.* Ertheiler, 1 Fed. Rep., 688; Amoskeag Mfg. Co. *v.* Spear, 2 Sandf., 599; Wotherspoon *v.* Currie, L. R. 5 H. L., 508; N. K. Fairbanks Co. *v.* Central Lard Co., 64 Fed. Rep., 133, 136.

The name Remington-Sholes Company did not differentiate the products of appellee and appellants, but confused their identity and led purchasers to take appellants' machines as and for appellee's.

Nor is it any *defense* to this action that the appellants placed their *address or place of manufacture upon the machines.* Gray *v.* Taper-Sleeve Pulley Works, 16 Fed. Rep., 436; N. K. Fairbanks Co. *v.* R. W. Bell Mfg. Co., 77 Fed. Rep., 869.

In the Taper-Sleeve Pulley Works case, above cited, Judge Atchison said (p. 442): "It is, however, urged that it is impossible that *the works at Dubuque, Ia., should be confounded with the works at Erie, Penn.*, and highly improbable that any one should be misled, as the words, 'Of Dubuque, Ia.,' are plainly added to the defendant's name on its goods, and also appear in all its advertisements, circulars, etc. But the business of the complainants and the defendant, respectively, *is not local;* their trade is co-extensive with the whole country, and even passes beyond. The complainant's most fruitful field of operations lies nearer to Dubuque than to Erie; and into that field the defendant may enter to sell under the reservation in the contract between Willard & Gray. There is credible evidence that no little *confusion* has actually arisen, and I think such is the unavoidable result of the double use of the same trade-name in this business."

Here the machines are sold and used not only in all parts of the United States, but also in foreign countries.

Appellee has for many years carried on a large business in *Chicago*, and in the territory adjacent

thereto, and the court will note the further fact that it has been proven herein *that much confusion in business arose in Chicago* in consequence of appellants' use of the word "Remington" in its *corporate* name, and the same name upon its machines and in its advertisements. The fact, however, is that the ordinary purchaser of writing machines does not go into *details*. He does not examine *name plates or catalogues* to ascertain by whom or where the machines are made.

R., pp. 370, 371, 450, 451, 452.

Very few purchasers know where or by whom the machines are manufactured.

R., pp. 451, 544.

It is not necessary that the public should know the name of the trader who uses the trade-mark or trade-name.

Powell *v.* B. V. B. Co. (1897), A. C., 715.

Furthermore, the name and address, Remington-Sholes Company, Chicago, might suggest to the intending purchaser that appellants' business was a *branch* of appellee's.

R., pp. 999, 1000.

*Third.*—The appellants allege in their answer that the "Remington-Sholes Typewriter Company" and "Remington-Sholes Company," in the advertisements of their machines, and upon packing cases enclosing the same, as well as upon their circulars, letter-heads, signs, etc., displayed the words, "Not the Remington Standard," for the purpose of cautioning the public not to *confuse* their machines with appellee's.

R , p. 25.

The *only* evidence in support of this allegation is that *for a short while the "Remington-Sholes Type-*

*writer Company*" displayed those words upon the window of its *Chicago* office, and caused them to be printed in the *Chicago* Business Directory for the year 1894.

R., pp. 439, 1358, 1445.

*There is no evidence showing that this advertisement in the Chicago Directory was continued after the year 1894, and the Court will bear in mind that the so-called "Remington-Sholes Typewriter" was not placed on the market until about January, 1895. How long this statement remained on the window of the Monroe street office in Chicago does not appear, but it does appear that the Remington Sholes Type writer Company, or Remington-Sholes Company subsequently removed their business to another building. There is no evidence that this statement was displayed on the windows of any other offices or upon the signs of those companies. Those words were not affixed to or placed upon the machines or the packing cases, or in any position where the ordinary purchaser would be likely to see them.* It is, therefore, manifest that a notice on the *office window at Chicago*, and in the *Chicago Directory for 1894*, would not inform the public *elsewhere* that the "Remington-Sholes Typewriter was not the Remington Standard." But even if the ordinary purchaser had observed the notice he might suppose that it only referred to *a different model or style of writing machine made by the same manufacturer*, and that the names "Remington Standard" and "Remington-Sholes" were simply employed to distinguish the models, one from the other. Moreover, it was established in this case that purchasers and the public generally have, for many years, known and identified the appellee's product by the word "Remington," and that comparatively few know its product as, or identify it by the words "Remington Standard."

That the word "*Standard*" does not serve to *identify* appellee's product was proven by appel-

lants. Appellants' witnesses, Baldwin and Hobbs, testified, in substance, that the word "Standard" meant any machine of $100 value, of a *standard* make, *and that said word did not point to or indicate the product of any particular manufacturer.* If this testimony be credible, then it is plain that the words "Remington Standard" do not identify or indicate appellee's products, and when employed by appellants, they served rather to *confuse* than to *enlighten* the ordinary purchaser. Obviously, comparatively few purchasers of typewriting machines, *even in Chicago*, ever saw the above quoted words upon appellants *office window* in that city, or in the *Chicago Directory*, and *there is no evidence that those words were ever displayed elsewhere.* Postulating that this is a case where appellants might have relieved themselves from legal liability by placing a distinctive and an adequate notice upon the machines, nevertheless, it is perfectly clear from the proofs herein, that the alleged notice to the public was wholly inadequate and is not of force as a defense to this action. Furthermore, we submit that this notice or statement, and others of like import, made by appellants, were improper and calculated to injure complainant's business rather than to protect it.

Pillsbury *v.* Pillsbury Washburn Flour Mills Co., 64 Fed. Rep., 849.

But this notice assumed that appellants were rightfully and lawfully using the name "Remington" upon their machines, or in other words, that the case was like that of an *individual* who was lawfully using his own name in a proper manner, and was taking the necessary precautions to distinguish his goods from his rival's. Such, however, is not the case at bar. Here the question is not one of a name which the appellants could lawfully employ, as the name Remington was simply appropriated from the appellee, and all use of it by ap-

pellants could not be otherwise than unfair. Furthermore, the statement upon the *Chicago* window and in the *Chicago* Directory tended to *injure* appellee, in that intending purchasers who saw it might regard the statement as an intimation that the "Remington-Sholes Typewriter" was the *genuine* "Remington" make, and that the so-called "Remington Standard" was to be avoided.

But the printing of the words above quoted did not repair the wrong in the case at bar.

> McCann *v.* Anthony, Am. Trade-Mark Cas., 1055, 1059, 1062. Dunlop P. Tyre Co., Ld. *v.* Dunlop, Truffault, C. & T. Mfg. Co., Ld., 12 Law Times Rept., 434. Bissell Chilled Plow Works *v.* T. M. Bissell Plow Co., 121 Fed. Rep., 357. 368.

Appellee contends that the cases in which an *individual* has been permitted to use his own name, although similar to plaintiff's, upon his goods, provided his name was accompanied by a statement upon the goods sold that he was distinct from plaintiff and had no connection with plaintiff's business, etc., are not applicable to the case at bar, for the reason that "Remington-Sholes Company" was not the name of any individual but was an *artificial* name invented for the purpose of obtaining the benefit of the repute of appellee's product and business. Also, because "Remington-Sholes" or "Rem-Sho" did not refer to "Remington" the *individual* but to the *product* of appellants' designated "Remington-Sholes" and "Rem-Sho" typewriter, by which means or designation appellants sought to get the benefit of the reputation, which had attached itself to appellee's product known as and designated by the "catch words" "Remington Typewriter." The case at bar is analogous to the Higgins, Rogers, Valentine and other cases, where the use of the plaintiff's trade-name, by the defendant, was unnecessary and improper and therefore suppressed,

and is clearly distinguishable from that class of cases where the names used had become *publici juris*.

*Fourth.* Appellants allege that in their catalogues they notified the public that the "Remington-Sholes Company" had no connection with the "Remington Standard Typewriter," and cautioned customers against confusing the "Remington-Sholes" or "Rem-Sho" machine with the "Remington Standard." The cautionary matter referred to will be found in appellant's calalogues *near the end thereof*, under the heading "In regard to our name." Instead of printing this matter at the *beginning* of the catalogue, and in a *conspicous* place where the *prospective* purchaser, who happened to examine the catalogue might possibly read it, this explanatory matter was placed *near the end of the catalogue*, and preceded by more than *twenty* printed pages. We have hitherto called the attention of the Court to the fact that in appellants' catalogue, "Complainant's Exhibit Rem-Sho Booklet," and "Complainant's Exhibit Remington-Sholes McGurrin Catalogue," *the first and most conspicuous announcement therein* was the statement—**"The only machine now made by a Remington"**—which was the *only* printed matter on the page. This indicated that one of the *first* things, which appellants desired to impress upon the mind of the *prospective* purchaser was that the so-called "Remington-Sholes," "Rem-Sho" typewriter was "a Remington" typewriter. This language would, and was intended to convey, a false impression to the purchaser of writing machines, who would understand it as refering to a machine emanating from the old Remington concern or the successors thereof. The *prominence* given to those words in the catalogue, and the printing of the same at the *beginning* thereof, *and placing the explanatory matter at the end where it was not likely to be seen or read*, clearly show the motive and intent of appellants. The statement near the end of the cata-

logue, as already pointed out, was in many *material* respects untrue, and was calculated to *mislead* rather than to *enlighten* prospective purchasers of writting machines. It will be noted that appellants never cautioned the purchaser that the "Remington-Sholes Company" had no connection with the old Remington concern, or the "Remington Typewriter Company," or with the *manufacturers* of the "Remington Typewriter." Comparatively few purchasers of typewriting machines read catalogues when handed to them, and if they examine them at all, do so very superficially and hurriedly.

R., p. 370.

It is plain that few purchasers would notice the explanation in the catalogue entitled "In regard to our name," and of those who did, nineteen out of twenty would simply regard the statements, taken in connection with the words above referred to, as an intimation that appellants machines were the *genuine* "Remington," *and that the "Remington Standard" typewriter was to be avoided.* In this connection the attention of the Court is invited to defendant's exhibit Remington-Sholes "Instructions to dealers" (R., p. 1453). In those instructions, issued after suit was commenced, are found these words: "Notice:

"We do not want any of our dealers, agents, travelling men, or salesmen, to make any *misrepsentations* in regard to our machine, neither do we want them to connect either the machine or the company with the "Remington Standard Typewriter Company." *We do not consider that it does us amy good to make this comparison*, and what we want is that our representatives sell our machine on its merits alone, which we believe are sufficient to enable them to meet competition, *and we do not feel at all flattered to have the title to our machine and that of the Remington confused.*"

This shows that appellants were conscious of the fact that *the name they were using in their busi-*

*ness and upon their machines was calculated to mislead, and that their dealers, agents and salesmen were trading upon the name "Remington" and the good will associated therewith*, but they hoped by these *pretences* and shows of virtue to avoid liability for infringement if brought into Court to answer for their unfair dealings. The remarks of the learned Court of Appeals of the Sixth Circuit in the case of Garrett *v.* T. H. Garrett & Co., 78 Fed. Rep., 472, 475, are pertinent in this connection. We quote as follows: "T. H. Garrett in his affidavit says that when the company was reorganized, Holloway brought up the question whether their brands and labels could be mistaken for those of complainant's or others, and that counsel were consulted on the subject, and that they advised certain changes 'out of abundant caution,' which were made. He affirms that these measures were taken 'to prevent confusion in the labels before there was any intimation of any dissatisfaction, or complaint on the part of complainants or anybody else.' He also refers to and quotes from the circular put out by the defendant company, December 31, 1895, *in which the hope is expressed 'that no one who tries our snuff will take it for theirs; that we should hate to have any one who has used our snuff use theirs afterwards, under the impression that it was ours, because it would hurt his opinion of our goods; and that we trust that everybody who tries our snuff will notice and remember that it is made by us and not by them.' If all this be true, why did defendant company, upon re-organization, cling to the name 'T. H. Garrett & Co.'? If that name had been attached to goods of inferior quality, why, in the re-organization, was it not dropped and another substituted, which would have relieved the company from the odium resulting, as they now claim, from the inferior quality of the snuff sold under that name?* T. H. Garrett was the owner of only two-and-a-half shares of the capital stock, the entire number of shares being three hundred and

fifty. He was not made an officer of the new company, and had only a subordinate position as an employee. *There was no apparent reason why his name should be adopted as the corporate name, unless it was that 'Garrett's snuff' had a reputation, and was in demand by the users of snuff all over the South—the territory sought to be occupied by the defendant company.* The statement, made by Holloway in his affidavit, that the only reason for retaining the name of T. H. Garrett in the name of the corporation was that he was the original projector and promoter, and that it would have been an unnecessary and unfair reflection on him to have changed the name, is mere pretense and sham, too bald to be even plausible."

In the Pillsbury case *ubi supra*, the Court observed (64 Fed. Rep., 848, 849): "The answer asserts that 'They have always stated and made known to their customers that said flour so handled by them under said brand is not the flour of the complainant's, but is a flour put up under said brand by themselves, manufactured from Minnesota wheat, and that said flour in their judgment is equal to, if not superior, that sold by the Pillsbury-Washburn Flour Mills Company, Ld.' It may be remarked in passing, that if these brands are so dissimilar that the 'most casual observer' cannot be imposed upon, why assure purchasers, wholesale and retail dealers, who are expected to be and naturally are more careful than a purchaser of a single package, that the goods sold were not the product of the Pillsbury Mills? *If the dissimilarity was manifest there would seem to exist no necessity for such assurance;* and yet we are inclined to give credence to the assertion of the appellants in this respect, and therein we think we discover the keynote of this scheme. They sell their goods with the false and simulated brand upon them to wholesale and retail dealers at a price below that for which the genuine product of the Pillsbury Mills can be purchased by them. They disclose to the re-

tail dealer their mode of procedure and their object. They appeal to the greed of their customers to purchase an inferior quality of flour, thus falsely branded with the name of the superior article, that the dealers may palm it off as the genuine article. No ingenuity could devise a more effectual way to pirate a good will. In the large, bold, displayed words 'Pillsbury's Best' and 'Pillsbury's Best XXXX' they address the general public. In their dealings with middlemen they declare the truth, making them accomplices in the fraud for their share of the profit. *True representations in aid of false ones, but aggravate the fraud.*"

In Walter Baker & Co. *v.* Saunders, 77 Fed. Rep., 181, 185, Judge Paul said: "The respondent states in his answer that 'he has from the beginning, and day by day, in the whole conduct of his business, by letterheads, price lists, cards, most extensive advertisements, and in every way known to commercial methods, warned dealers and the public against the possibility of confusing respondent's name with that of any other Baker & Co., engaged in the chocolate business.' This he says is done by conspicuously printing on his letterheads and in his advertisements, 'Positively no connection with any other Baker & Co. chocolate makers,' and by an advertisement as follows: 'You will find other brands of chocolate and cocoa placed on the market under the name of Baker & Co., but take only that having the initials 'W. H. Baker & Co.' and then you will always be satisfied.' Conspicuously with these announcements also appear the words 'Established in Mercantile Business 1785.'"

A similar defense was made in the case of Pillsbury *v.* Flour Mills Co., 12 C. C. A., 432, 64 Fed. Rep., 841, and in that case the Court said: "*We may in this case, with propriety ask if the goods of the respondent are so distinctively marked as to prevent confusion with those of the complainant, why the necessity of these frequent warnings to the public that they are not the goods of the complainant?*"

The above quoted excerpts fully meet and answer the defendant's contention, for paraphrasing the language of the learned Court, we may in this case with propriety ask if the machines of appellants were so distinctly marked, and of such design and finish *and so designated as to prevent confusion with those of appellee, why these frequent warnings to the public that they were not the machines of the appellee*, or to use, substantially, the language of the appellant's catalogue that the "Remington-Sholes Company" had no connection whatever with the "Remington Standard" typewriter.

In the excerpt from appellants' catalogue, above referred to, are these words: "We are sometimes asked about the right of the Messrs. Remington and Sholes to the use of their own names in connection with typewriters." It would appear from this statement that the question had been raised—probably *by dealers or purchasers*—whether or no the Remington-Sholes Company had the right to use the name "Remington" in its corporate name, and as part of a designation for its machines. This inference is confirmed by the letter of Franklin Remington, of January 22, 1896. *He there says that he and his associates did at the outset and have continuously since consulted eminent counsel as to the right to use the names Remington and Sholes.* The appellants and Franklin Remington appear to have labored under the same *misapprehension* as did F. G. Stewart, who organized a corporation bearing his name for the purpose of selling "Dr. Stewart's Dyspepsia Tablets," there being another brand on the market known as "Steuart's Dyspepsia Tablets." In that case, Judge Jenkins speaking for the Circuit Court of Appeals of the 7th Circuit (91 Fed. Rep., 243, 247, 248), said: "Almost in his first attempt to market his wares, *he was advised by dealers* that he was encroaching upon the rights of the appellant. It is manifest that he was. Stewart justified himself to the wholesale dealers, who cautioned him, *by the claim that he used his own*

*name, and that he had a right to use it as he would. Therein he was in error. A man may not use his own name to accomplish a fraud, designed or constructive.*"

The vice of the statement in appellant's catalogue consists in the assumption that Messrs. Franklin Remington and Zalmon G. Sholes were using their own names in their own business. Such was not the fact. The name "Remington-Sholes Company" was not the name of *any individuals, but was an artificial name invented for a purpose*, and the designation "Remington-Sholes" used upon appellants' machines did not refer to "Remington" and "Sholes" *the individuals* but to the *product* of appellants—the Remington-Sholes typewriter. In other words the name "Remington" was used as the name, or part of the name of appellants' machines and not as that of the individual, Franklin Remington, the artificial (corporate) name designating a business in which Franklin Remington then had only one-twentieth interest that is he owned 150 of the 3,000 shares of the capital stock of the Remington-Sholes Co. Manifestly he lost his identity in that of the corporation Remington-Sholes Company.

*Fifth.* It is alleged in appellants' answer, and it was contended below that the trade and purchasing public distinguished appellee's machine not by the word "Remington" but by the words "Remington Standard," the red seal trade-mark and the words "Manufactured by Wyckoff, Seamans & Benedict, Ilion, N. Y., U. S. A." These allegations and this contention are wholly inadmissible for the reason that the proofs in this cause are to the contrary, in that the evidence shows that the public *generally* distinguishes appellee's product by the word "Remington," and "does not go into the minuter refinements of the title" on the machines.

Baker & Co. *v.* Saunders, 80 Fed. Rep., 894, and cases previously cited.
Kerly on T. M., 2d Ed., 491.

The testimony of Browne (R., pp. 450, 451) and that of Stallwood, Weingart and others, establishes this fact. It is undoubtedly true that appellee has used the word "Standard," its red seal trademark and its corporate name upon its machines and in its advertising media, but it never did so except in connection with the name "Remington," and by so doing it has not in any manner created an *estoppel*, whereby it is concluded as to the broader and more generic right to be protected against the unfair competition in the bill of complaint described.

Orr-Ewing & Co. *v.* Johnston & Co., 13 Ch. D., 434.

**The beginning and foundation of every extensive good will and business is a knowledge of the fact that the article exists.**

The introduction of an article is accomplished by making known its name To inform the public that there is such a writing machine as the **Remington** typewriter is to introduce it. For many years, appellee and its predecessors have continued diligently and in many ways to inform the public of the existence of the "**Remington typewriter.**" The fact that *specific trade-marks* have been employed, in connection with the name "Remington," has not affected the *generic* popularization of the name of the machine. It may be said for the purposes of argument, that there is one class of purchasers, which is necessarily large, that knows appellee's machine as the "Remington," or "Remington typewriter," and that a smaller number have a more *specific* knowledge and know it as the "Remington Standard Typewriter," or "The Remington Standard" with a red seal, etc. But it is a matter of common knowledge that the names of products which have been upon the market for many years acquire almost universal currency. In many cases the name is known and used without

a distinct recollection or use of the technical trade-mark, which may long have been attached to the article. Many illustrations of this fact might be given, as for example, "Rogers Cutlery," "Gorham Plate," "Baker's Chocolate," "Babbitt's Soap" and "Clark's Thread." In most cases the retail customer or prospective buyer of average intelligence has *no recollection of the technical trade-marks, or the places where the goods are manufactured, or the names of the manufacturers which have invariably been attached to the goods.* He remembers only "the short trade phrase and abbreviated and popular form" of expression or "catch words" to which the names upon the goods give currency, and relies upon them in making his purchases. Hence under any view of this question, which may be taken, it follows that *the large class of purchasers* who know and distinguish appellee's product by the "catch words" "Remington" and "Remington typewriter" is entitled to protection against the unfair and fraudulent acts of appellants.

*Sixth.* The appellants admit in their answer that appellee registered the name "Remington" as a trade-mark on or about October 23, 1888, but deny that said word constitutes proper subject matter that could be appropriated by any one as a trade-mark for typewriting machines.

R., p. 20.

Whether the registration of the word "Remington" as a trade-mark was a proper and lawful one is a matter of no consequence in this case.

In Garrett *v.* Garrett, 78 Fed. Rep., 477, the Court of Appeals of the Sixth Circuit said: "That the complainants were entitled to the use of the word 'Garrett' on their labels as a trade-mark or as *a descriptive word*, is, in our opinion, beyond question upon the undisputed facts of the case. They and their predecessors had enjoyed such use for many

years and had built up an extensive trade based upon it. *Even if it could not be used as a trade mark, it is to be treated as a descriptive term, to the benefit of which they are entitled.* It was so held by the Court of Appeals of this Circuit in California Fig Syrup Co. *v.* Frederick Stearns & Co., 20 C. C. A., 22, 73 Fed. 812, and in Salt Co. *v.* Burnap, also decided by the Court of Appeals of the Sixth Circuit and reported 20 C. C. A., 27, 73 Fed., 818."

To the same effect are the cases of DeLong *v.* DeLong Hook & Eye Co., 32 N. Y, Supp., 204, and Reddaway *v.* Banham (1896), A. C., 199, and many other cases.

The registration constituted an assertion of a proprietary right in and to the name "Remington" as a trade designation for appellee's machines as early as 1880, and was notice to the public of its claim.

*Seventh.* Appellants' denial of any fraudulent purpose to market and sell their writing machines upon the established reputation of appellee and its predecessor's business and as their product, etc., cannot avail in this case.

(1) Because as hitherto shown they *knew* the facts in respect to appellee's business and product and had due notice of appellee's rights and claims in the premises, and after such notice continued to use its trade name.

R., p. 1444, 291, 292, 805, 809.
Higgins Co. *v.* Higgins Soap Co., 144 N. Y., 471.
Holmes *v.* Holmes, Booth & Atwood Mfg. Co., 37 Conn., 278.
Fuller *v.* Huff, 104 Fed. Rep., 145.
Saxlehner *v.* Eisner, etc., Co., 179 U. S., 41.
Orr-Ewing *v.* Johnson, 13 C. D., 454 (1880).

(2) The appellants acted in a manner that naturally tended to deceive the public, and the public was deceived by their acts, and hence they are

presumed to have contemplated the natural consequences of them.

R. Heinisch's Sons Co. *v.* Boker, 86 Fed. Rep., 765.
Gray *v.* Taper-Sleeve Pulley Works, 16 Fed. Rep., 436, 442.

In the Gray case, Judge Atchison aptly observes:

"The defendant company, indeed, in its answer, stoutly denies any fraudulent purpose or intention to injure the complainants. But the company must be judged by its acts rather than by its words. It requires a great stretch of charity to acquit the defendants of actual wrongful purpose. *But, whatever the secret intent, the stubborn fact remains that the conduct of the defendant does tend to induce the public belief that its establishment is a branch of the complainant's or connected therewith, and it must be taken to intend the natural consequences of its acts.*"

**Neither Fay nor Remington were called as witnesses to deny the allegation of fraudulent intent charged in the bill, nor have they given any explanation of how the "Remington-Sholes Typewriter Co., or Remington-Sholes Co. came into existence.**

*Eighth.* In respect of the contention of appellants and that they had the right to publish and to assert that the "Remington-Sholes" or "Rem-Sho" typewriter was the only writing machine made by a Remington, etc., because that statement was truthful, in that Franklin Remington was connected with the Remington-Sholes Company, it is to be said: *first*, that if the statement implies that appellants' machine was manufactured by him, we have shown that such was not the fact, and *second*, that it was an *unnecessary*, improper and fraudulent use of the name "Remington," which by long and exclusive use had come to mean appellee's writing machines.

"A Remington" means a writing machine possessing certain excellent qualities and made by the successors of the old Remington concern.

In International Silver Co. *v.* Simeon L. and Geo. H. Rogers Co. (110 Fed. Rep.), 955, 960, where the Defendants had asserted in advertisements, etc., that they were the only real Rogers Bros. in the business, etc., the Circuit Court, speaking through Judge Shipman, said: "This reason for the action of the Defendant corporation existed, but it had also a broader motive, which was to impress upon the public the belief that its business is a continuation of the character and the business of the original firm, and of gaining thereby an advantage over those who are the rightful successors in the same business. This practice shows the unjustifiable use which the corporation is attempting to make of the position of the two sons of Simeon S. Rogers in its business, and the assertions should be restrained by injunction."

In Chickering *v.* Chickering (120 Fed. Rep., 69, 73, 74), the Circuit Court of Appeals said: "The assertion of the Appellants in their publications that 'they make the only piano made by a Chickering' is also deceiving, and its adoption immediately after the death of Mr. Geo. H. Chickering might well induce the belief that its use is intentionally designed to deceive and acquire for themselves the trade and good will of the Appellee. While the truth of the statement may be conceded, it is, as stated, only a half truth, conveying to the public the idea that the 'Chickering piano' known to the public was made by the Appellants and not by the Appellee."

In Reddaway *v.* Banham (1896), App. Cas. at p. 212, Lord Herschell said: "I rather demur, however, to the statement of James, L. J., that the defendent in Wotherspoon *v.* Currie (42 L. J., Ch. 130) was not telling a lie in calling his starch "Glenfield Starch," as I do to the view that the defendants in this case were telling the simple truth when they

sold their belting as camel hair belting. I think the fallacy lies in overlooking the fact that a word may acquire in a trade a secondary meaning differing from its primary one, and that if it is used to persons in the trade who will understand it in its secondary sense, it will be none the less a falsehood that in its primary sense it may be true."

In the same case Lord Macnaghten said: "At Banham's works, where it cannot mean Reddaway's belting, it may be construed to mean belting made of camel's hair; abroad, to the German manufacturer, to the Bombay mill-owner, to the up-country native, it must mean Reddaway's; it can mean nothing else. I venture to think that a statement which is literally true, but which is intended to convey a false impression has something of a faulty ring about it; it is not sterling coin; it has no right to the genuine stamp and impress of truth."

So in this case when the appellant and its principal and their agents and dealers used the name "Remington"—which had acquired a secondary meaning—upon their machines and signs, and in their advertising media, they did that which was calculated to mislead and was intended to convey a false impression, and it was none the less a falsehood by reason of the fact that ~~the~~ Franklin Remington was connected with and had a *nominal* interest in the Remington-Sholes Company. In other words, *they used appellee's trade name as a designation for their product and business and not as the name of any individual.* They, also, adroitly sought to impress the mind of the public with the belief that they were the successors of E. Remington & Sons.

*Ninth.* In considering the question whether the court below erred in enjoining Howe Scale Co.'s use of the name "Remington" and the abbreviation "Rem" in connection with its machine and business, it is to be noted that the Court was not required to confine its attention simply, *to that which was stamped*

*upon the machines*, because in many cases of trade interference, wherein injunctions have been granted, the fraudulent trade names were used as descriptions of the defendants for *general* purposes, and in their advertisements, circulars, signs, etc.

Kelly on Trade-marks (2d Ed.), p. 491.

In the case at bar, appellants and their agents and dealers in offering for sale, advertising for sale and selling the so-called Rem-Sho machines, used, among others, the following names and words, to wit:

Remington-Sholes Typewriter.
Rem-Sho Typewriter.
Remington-Sholes Co.
REMEMBER the NAME.
The Remington-Sholes Standard Typewriter.
REM-SHO.
Remington-Sholes.
Standard Typewriter.
Remington Imperial.
Remington Typewriters * * * called,
Remington-Sholes.
Remington-Sholes,
New Model "Remington."
These Genuine Remingtons made by Remington-Sholes.
Rem-Sho Typewriter.
The only typewriter manufactured to-day by a REMINGTON.
* * * It represents the SECOND GENERATION of typewriter manufacturers bearing this great name.
The only machine made by a Remington is the new Remington-Sholes.
Rem-Sho Typewriter, the only machine now manufactured by Mr. Remington.
Mr. Franklin Remington, son and grandson of the old and celebrated American house, is the only member of that family now engaged in the manufacture of a typewriter * * *

In cases like that at bar, the action of the court extends to every kind of misrepresentation which is calculated to pass off the defendant's goods as the plaintiff's, and hence the court will consider all the badges of fraud connected with the offering for sale, advertising for sale, or sale of a defendant's goods.

Bearing in mind that the names "Remington Typewriter Co." and "Remington Standard Typewriter Co." had long been used in connection with appellee's business, and that the names "Remington," "Remington Typewriter" and "Remington Standard Typewriter," had been associated with its product long before appellants entered the typewriter field, it is manifest that the names used by appellants upon and in connection with the sale of their machines, were calculated to divert appellee's trade to appellants by confusing the identity of the products of both and lead purchasers to buy those of one for those of the other.

Said Judge Wallace in the Rogers case (70 Fed. Rep., 1019): "No person is permitted to use his own name in such a manner as to inflict an unnecessary injury upon another. The corporators chose the name (Rogers) unnecessarily and having done so for the purpose of unfair competition, cannot be permitted to use it to the injury of the complainant."

## THE NAME REMINGTON-SHOLES.

Counsel for Appellants stated in the court below that "to those familiar with the name Remington-Sholes Company, or having such name before them, the name Rem-Sho might, without any exercise of extraordinary cleverness, be considered to be an abbreviation of the name Remington-Sholes."

In another connection the learned counsel asserted that the "same mental act that converts 'Rem-Sho' into 'Remington-Sholes' brings at once to the

mind both names—'Remington' and 'Sholes',—and with both names thus before him there can be no possible excuse for any one confounding these two names with the single name Remington."

In answer to this contention the Circuit Court said: "Connecting the name 'Sholes' with 'Remington' in the business and on the machines would not or might not adequately indicate to a purchaser who had known or heard of the Remington typewriters, and wanted one, that these were not original Remingtons such as were wanted. The name, although linked with Sholes, would indicate Remington connection in typewriter production and imply the original manufacture."

The Court of Appeals, speaking by Judge Lacombe, referred to the use of the name Remington-Sholes by the appellants, their predecessors and the promoters thereof as follows: "They knew that the presence of that name (Remington) on the machine would be a constant temptation, often yielded to, by whomsoever sold one to the uninstructed purchaser, to represent that it was the 'real' or the 'improved' Remington; that the presence of the name made confusion easy; and that the results of any confusion would be entirely in their favor."

These statements of the courts below are entirely sustained by the evidence of Stallwood, Weingart and others. The appellants not only used the name "Remington-Sholes," but they "*garnished the use*" thereof by asserting in their advertisements, and catalogues, and by their agents and dealers that appellants' machine was "the only machine now made by a Remington," and "the only typewriter manufactured to-day by a Remington." That the Remington-Sholes machine represented "the second generation of typewriter manufacturers bearing this great name"—Remington. In their advertisements, etc., they printed the name "Remington" and the words "second generation" in bold faced capitals. These statements were constantly repeated

to the prospective purchaser by agents and dealers. The effect of all this was to impress upon the mind of the purchaser that "Remington" was the great and important name, and that the name "Sholes" was of little or no consequence. In other words their acts and words showed that the name "Remington" was the dominant and salient part of the name "Remington-Sholes." The purpose of these statements was to impress the mind of the public with the belief that the appellants' machine was "a Remington." Appellants in their instructions to their agents and dealers concerning the Remington-Sholes typewriter said: "The machine has now been fully explained and it remains with the salesman to add such other interesting facts, such as the history of the company, the connection of our Mr. Remington with this machine, and the relation (connection) to the old Remington Standard, the fact that this is the second generation of typewriter builders, and that the same standard of excellence is being maintained in the manufacture of this machine as all other goods which have been produced by the Remingtons." It will be observed that in these instructions to agents and dealers appellants referred to the *connection* of our Mr. Remington not only with the Remington-Sholes machine, but also his relation to "the old Remington Standard" machine. In other words, they associated in the minds of their agents and dealers Mr. Remington and the Remington-Sholes machine with appellee's product and business. The assertion that they are the *second generation* of typewriter builders and are maintaining *the same standard of excellence* in the manufacture of the Remington-Sholes machine *as in the case of all goods produced by the Remingtons*, clearly indicates *successorship, and that they have succeeded to the skill and excellence in typewriter manufacture that belonged to the old Remington concern whose lawful successor the appellee is.*

Furthermore, it is not to be forgotten that the name "Sholes," which was suffixed or added to the name Remington, tended rather to accentuate the connection of the Remington-Sholes Co. with appellee and its machine than to differentiate the same.

It appears in the record that the name Sholes had been associated with the earliest form of appellee's predecessor's machines, in consequence of one Sholes being one of the originators thereof.

The earliest model put on the market by E. Remington & Sons Corporation was designated "Sholes & Glidden." *No two names could have been selected from the vocabularies of the world which were so well calculated to divert and injure the good will of appellee's business as the names Remington-Sholes*, and that appellants *knew* this fact is shown by the *continual iteration* in their publications, and by word of mouth, that Mr. Sholes is the son of "the original inventor of the Remington Standard Typewriter," and that Mr. Remington is the "son of the original manufacturer of the well-known typewriter that bears his name."

We submit, therefore, that appellants' contention that by making use of the name "Sholes" it did that which tended to differentiate its product from that of appellee's cannot be maintained. On the contrary, the selection and use of the name "Sholes" tended rather to produce confusion in business than to prevent it.

## DECISION OF THE GERMAN COURTS.

*Tenth.*—An alleged decision of the German courts was pleaded as a defense by appellants (R., pp. 29, 30, Sub-division XII), but it was not introduced in evidence or any proof made in respect thereto. The appellants gave notice upon the record that at the hearing of the cause they would refer to said decision. *It is scarcely necessary to say that allegations*

*without proofs requisite to support them are wholly unavailing.*

The action was a civil proceeding by the firm of Glogowski & Co., of Berlin, against one Henry Newald of the same city, under the **Civil Code** and **Trade-mark Laws** of the German Empire. At the time the action was prosecuted, Glogowski & Co. were the exclusive resident dealers for Germany of appellee's machines, and Newald was a dealer, selling the so-called "Remington-Sholes" machine in Germany. Glogowski & Co., being the resident dealers of appellee's machines, had under the German Trade-mark law registered the name "Remington" as a trade-mark for the goods they were selling. Newald was selling the machines of the "Remington-Sholes Typewriter Company" with the name of that concern upon them.

**It was an affidavit case** ; that is to say, no witnesses were examined in court or depositions taken in the usual manner, nor were any of the affiants cross-examined. The consequence was that while the *plaintiff's* case was meagerly and imperfectly presented, the defendant Newald was furnished with sundry affidavits by the Remington-Sholes Typewriter Company, which not only stoutly denied the plaintiff's right to use the name "Remington," upon or in connection with the sale of their machines, but also contained many gross misstatements of fact. The court ultimately came to the conclusion that inasmuch as the defendant Newald dealt exclusively in the goods of an American firm, which had the name "Remington-Sholes Typewriter Company" upon them, he could not, under the *special provisions of the German Trade-mark Law, and in view of the Convention between the German Empire and the United States*, be prevented from selling the typewriting machines of the so-called American firm, "Remington-Sholes Typewriter Company," in Germany. Obviously the *parties* to that proceeding, the *issues* therein, and the *law* applicable thereto were *totally* different from those in the case at bar.

**The decision of the Court in that case cannot avail the appellants as an authority here.**

*First*, because the question there was one which arose under the Trade-mark Laws of *Germany*, which are wholly unlike those of this country. *Second*, because no such state of facts was presented in that case as is disclosed in the case at bar. *Third*, because it has been decided by the courts in this country that an adjudication in *Germany*, like that set forth in appellants' answer, is of no force here, for the reason that *foreign* adjudications, *as respects torts*, are not binding upon the courts in this country, and the granting of an injunction depends upon circumstances which vary in different jurisdictions; and *lastly* because the parties in the *German* case were other and different from those in this action.

Wharton's Conflict of Laws, Secs. 793, 827; Hohner *v.* Gratz, 50 Fed. Rep., 369; City of Carlsbad *v.* Kutnow, 68 Fed. Rep., 794; S. C. App., 71 Fed. Rep., 167.

## INJUNCTION.

**Appellants' counsel in the courts below asserted that the injunctive portion of the decree was too broad, in that it restrained the Howe Scale Company from the use of the personal name "Remington."**

It must not be overlooked in this case that the injunction only went against the Howe Scale Company, which in its own right made no claim to the word "Remington," and at the time the injunction was issued had permanently retired from the typewriter business. No injunction has in fact been issued against the Remington-Sholes Co. (now Fay-Sholes Co.)

It is scarcely necessary to point out that neither

Franklin Remington nor any other *individual* of the name Remington has been enjoined from using his own name in his own business. Both the Howe Scale Company and the Remington-Sholes Company, are artificial persons, and the name "Remington-Sholes" as used by them, to quote the words of the learned L. J., in Valentine Meat Juice Co. case (British Ct. App. 17 R. P. C., 684), "was not the name of any man. It was an artificial name, invented for a purpose." The Court below having reached the conclusion that the name "Remington" had been intentionally selected, *malo animo*, in order to compete with the appellee and to divert its trade to appellants by confusing the identity of the products of both to the injury of appellee, and was being used for that purpose, was correct in suppressing such fraudulent use. In the following cases an injunction similar in form to that of the case at bar was awarded.

Montgomery *v.* Thompson, 41 Ch. Div. 35 on appeal (1891) App. Cas., 217.

Wotherspoon *v.* Currie L. R. 5 H. L., 508. Valentine Meat Juice Co. Ltd. *v.* Valentine Extract Co., Ltd. and others, 17 R. P. C. British Ct. App., 673, 688. S. C. L. T. N. S., 271.

Pinet *v.* Maison Louis Pinet, 15 R. P. C., 65, 67 L. J. Ch., 41.

Newman *v.* Alvord, 51 N. Y., 189, 195.

Garrett *v.* T. H. Garret & Co., 78 Fed. Rep., 472. Clark Thread Co. *v.* Armitage, 67 Fed Rep., 896. S. C., 74 Fed. Rep., 936. Rogers Co. *v.* Rogers Mfg. Co., 70 Fed. Rep., 1017, and many other similar cases.

## SALES OF APPELLANTS' MACHINES.

**Appellants efforts to pirate the good-will of appellee's business were successful, and the use of the name Remington, both in the corporate name and as a designation, or a part of a designation for appellants' machines was properly enjoined.**

I. Howe Scale Co. adverti-ed for sale, and sold the so-called Remington-Sholes typewriter prior and subsequent to the filing of the bill of complaint herein. The bill alleges that after the first day of May, A. D. 1897, and before the filing thereof, the defendant advertised for sale, offered for sale and sold a large number of typewriting machines in the State of Vermont and in the cities of Chicago, Ill., Boston, Mass., Portland, Ore., Kansas City, Mo., New York, N. Y., Baltimore, Md., Pittsburg, Pa., Cincinnati, O., San Francisco, Cal., Philadelphia, Pa., Minneapolis, Minn., Cleveland, O., St. Louis, Mo., Los Angeles, Cal., and that it continues to advertise for sale and to sell such machines under the name of and by the designation "Remington-Sholes" and "Rem Sho" typewriter.

R., pp. 8, 9.

This allegation of the bill is admitted in appellants' answer.

R., pp. 27, 28.

In addition to the above admission contained in their answer, it appears from the evidence of sundry witnesses that appellants sold these machines through their sales offices in various cities and localities in the United States.

Mr. Scorer, one of their sales agents, stated that during the time he was engaged in the sale of the "Remington-Sholes" typewriter in Pittsburg and vicinity, *the appellants sold about ninety machines from $67.50 up to $85.50.* He was instructed to

accept a reasonable price and he understood that to mean a price equal to $60 net.

R., p. 351.

It appears from the evidence of appellants' witnesses, **Williams** (R., pp. 1221, 1222), **MacNaugher** (R., p. 1228) and **Beitel** (R., p. 1237), that sales of said machines were made at the appellants' *Pittsburg* office.

The evidence of **Trenholm** (R., pp. 1262, 1263, 1271), **Parker** (R., pp. 1279, 1284, 1285) and **Hatch** (R., pp. 1051, 1059, 1064, 1065, 1066), shows that sales of said machines were made by appellants in *the City of New York* and elsewhere.

Sales were also made at the *Philadelphia* office of appellants as appears by the evidence of **Romig** (R., p. 1123) and **Wilgus** (1339, 1343).

**Complainant's Exhibit Seddon-Romig Letter** (R., pp. 971, 972), also shows that the appellants had, theretofore, *sold the United States Government one hundred and thirty machines;* that they were supplying machines to their *foreign* representatives, and had secured some of appellee's *foreign* agents.

At the *Baltimore* office it appears from the testimony of Gillelan that the **"Tribune Cycle Company"** was representing appellants in the sale of the "Remington-Sholes" or "Rem-Sho" typewriter (R., pp. 1327, 1334, 1336), and that *thirty or forty machines were sold for use in and about Baltimore.* It appears from the evidence of appellants' witness **Hobbs**, that large sales of appellants' machines were made in *the City of Chicago* (R., pp. 1099, 1100), and from the evidence of appellants' witness **Baldwin** (R., pp. 1023, 1024 *et seq.*), and that of **Hatch** (R., pp. 1077, 1078), that *dealerships and agencies* were established in many cities and towns in the United States where appellants' machines were sold. Machines were also sold in the city of Washington. This is shown by

**Complainant's Exhibit, Seddon-Romig Letter,** and by the testimony of **Frank L. Sholes** and others.

Appellants' agent and manager, **Seddon,** stated to Scheumaker that he had sold a number of "Remington-Sholes" machines in the Eastern States, and had secured appellee's agents in several localities.

R., pp. 173, 174.

From the evidence of **Hobbs,** who was the Chicago manager of the "Remington-Sholes Company," it appears that the "*Remington-Sholes*" *machines were sold as low as $60.00,* and the same fact is stated in the deposition of the witness **Scorer** and others.

R., pp. 555, 559.

**It will be observed that the appellants had entered with energy into fields and districts where appellee's machine had for many years been largely sold and used, and had sold their machines at a much lower price than appellee sold its typewriters.** By selling its machines at a lower price than appellee did, the appellants were enabled to offer *extra inducements to agents and dealers as regards prices,* and thereby the appellee's machines were displaced and its business was injured. Appellants sold their typewriters, with the *simulated name* and designation upon them, to their agents and dealers *at a price below* that for which the *genuine* product of the appellee could be purchased. They thus appealed to the greed of their customers to buy their machines at *a less price* than appellee's product could be obtained, and having appellee's trade-name and designation—"Remington"—thereon, appellants' machines were palmed off by its dealers as and for the *genuine* Remington, or the *new and improved* Remington typewriter.

Pillsbury *v.* Pillsbury-Washburn Flour Mills Co., 64 Fed. Rep., 841, 849.

It goes without saying, that a *new* typewriting machine could only with great difficulty and after years of effort, be expected to compete, successfully, with the old and favorably known typewriter manufactured and sold by appellee, everywhere *known as the "Remington" and "Remington typewriter." But appellants, by stamping appellee's trade-name and designation upon their machines, and selling them at a less price than appellee's* were sold, and by representing their machines as the *genuine Remington, the new and improved Remington, and the only machine made by a Remington, etc., were enabled to compete successfully with appellee, and to displace its machines in localities and districts whevein they had been largely sold and used.*

There is no doubt that the appellee sustained very *substantial* loss and damages in consequence of the acts of appellants; but even if this were not the fact, the appellee was, nevertheless, entitled to relief in this case.

In Reddaway *v.* Bentham Co., 2 Q. B., 639, the English Court of Appeal, through Lopes, *L. J.*, said: "If an article has acquired a *distinctive* meaning in the trade, connecting it with a *particular* person's manufacture, *and another so advertises or describes or makes up his goods, as to lead purchasers to believe,* or *to create probability of their believing that they are buying the goods of the former, when in fact they are buying the goods of the latter, and this, though there is no intention to defraud and no special damage proved, a Court of Equity will grant relief by way of injunction.*"

To the same effect Rahtjen's American Composition Company *v.* Holzappel's Comp. Company, 101 Fed. Rep., 257; Oxford University *v.* Wilmore-Andrews Publishing Company, 101 Fed. Rep., 443.

## OPINION OF JUDGE WALLACE.

There was no conflict of opinion in this case between the judges of the courts below in respect *of matters of law.*

The dissent of Judge Wallace was based solely on questions of fact. He did not dissent from any proposition of law enunciated in the majority opinion of the Court of Appeals. In fact the learned Judge had already, in the Rogers case, (70 F. R., 1019) enunciated the proposition quoted and applied in the prevailing opinion herein.

In his opinion Judge Wallace admits that "doubtless some careless purchasers have been misled and some unscrupulous dealers have traded on the resemblance imparted by the word Remington." . . . . . That "if the defendant had selected its name for the purpose of unfair competition in trade with the Complainant the question whether the collocation of the word Remington with other words did not suffice to distinguish its name from the Complainant's name would be of little importance." . . . . . And again when speaking of the right of Franklin Remington to use his own name in the corporate designation, "Remington-Sholes Typewriter Co." he qualifies such right to use the same with the limitation, "provided it is (was) not chosen as a cover for unfair competition."

The learned Judge, also, apparently overlooked the fact that the appellee's predecessors acquired the *whole typewriter business of E. Remington & Sons Corporation*, including the good-will, trade-names and trade-marks used in connection with the manufacture and sale of the Remington typewriting machines.

He also apparently overlooked the fact that appellee's predecessor registered the name "Remington" in the United States Patent Office, that it used the name "Remington" conspicuously upon the paper table of its machines, and that its ma-

chines were advertised, designated and sold as the Remington, and long prior to the organization of the Remington-Sholes Typewriter Co. had become generally known as the Remington Typewriter.

Judge Wallace also appears to have overlooked the fact that the evidence in this case establishes the fact that the ordinary purchaser of writing machines relies upon the name "Remington" which has been so long and exclusively identified with appellee's business as to inform the public that the name upon typewriters means that they are the product of the old Remington factory and of appellee, and that the ordinary buyer of typewriters is unacquainted with the external appearance and physical characteristics of the machines, and in purchasing relies upon the name and repute of the machine which he desires to purchase.

The learned Judge, also, seems to have erroneously found that the Remington-Sholes Typewriter Co. was the *successor* in business of another concern of which the Remingtons and Sholes were the owners.

This finding or statement of fact could only refer to "The Z. G. Sholes Co.," which appellants assert *never made or sold any typewriting machines or had any business*, and this contention is in accordance with the majority opinion of the Circuit Court of Appeals, wherein it is said that "prior to the formation of the Remington-Sholes Typewriter Co. no machines had been sold or offered for sale. Two or more had been made as models, and the name was then changed from 'Z. G. Sholes' to 'Remington-Sholes,' but the new name had not become associated with the machine except in the talk of the future corporators among themselves; the public knew nothing of any such name in connection with a typewriter, indeed did not know the junior Remingtons or even Sholes as a producer of typewriters."

Furthermore, Judge Wallace also appears to have erroneously found that the machines had been introduced to the public prior to the organization of the Remington-Sholes Typewriter Co., for he says that it was natural that those who had invented the machine and given all their time and means *in introducing it to the public* when they came to organize a corporation, . . . . . should choose their own name as a corporate name."

The machine was not introduced to the public prior to December, 1894, and perhaps not till later.

R., pp. 410, 1110.

Manifestly Judge Wallace misapprehended or did not become fully possessed of the facts and circumstances disclosed by the record in this case or he would undoubtedly have reached the same conclusion that he did in the Rogers case (70 Fed. Rep., 1017, 1019), wherein Judge Shipman found and said: "In this case Rogers helped to establish a corporation which took his name for the purpose of inducing the public to think that they were buying the well-known Rogers goods, and for the purpose of surreptitiously obtaining the advantage of the good reputation which other manufacturers had given to articles stamped with that name." In this same case Judge Wallace found that "The corporators chose the name unnecessarily, and, having done so for the purpose of unfair competition, cannot be permitted to use it to the injury of Complainant." In the case at bar Judge Coxe concurred in the conclusion reached by Judge Lacombe for the reason that he was unable to distinguish this cause from Rogers *v.* Rogers (70 Fed. Rep., 1017) and therefore found as did Judge Lacombe that there was "a tricky, dishonest and fraudulent use" of the name Remington, and that the corporators, Remington, Sholes, Fay and Head, chose the name Remington unnecessarily, and did so for the purpose of unfair competition.

## CASES CITED BY APPELLANTS.

(A.) It is alleged that the decision of the Circuit Court of Appeals of the second circuit in the case of National Starch Mfg. Co. *vs.* Duryea (79 Fed. Rep., 651, 101 F. R., 117) is in conflict with the decision of the Court in the case at bar.

In the Duryea case it appeared that Duryea & Co. was a firm, composed of two sons of Hiram Duryea, one of the original founders of the Duryea Starch business and two other persons, and that Hiram Duryea furnished *all* the capital for the firm. It also appeared that Hiram Duryea, during the progress of the suit and before the case came to final hearing, acquired the ownership of the *entire* business.

It was conceded by plaintiff that Hiram Duryea had a right to enter directly or indirectly into the starch business at the time of the commencement of the action, and had a right to permit his name to be used in the new enterprise.

The evidence in the case showed that the defendants simply used the name Duryea & Company, and had not in any way *garnished* the use thereof. They had simply designated their starch "Laundry Starch" and "Pure Corn Flour" prepared by Duryea & Co, and had never used the word "Duryea" *as a designation or part of a designation for their goods.* On the appeal from the order granting an injunction *pendente lite* (79 Fed. Rep., 652) the Court said:

"It cannot be denied that by continuous and rightful use for forty years, the name Duryea's Starch" had become identified with its source of manufacture, and that an attempt by persons by the name of Duryea, or of any other name, to put upon the market their own product under the name "Duryea Starch" could be suppressed.

Inasmuch as defendants have not called their starch by this well known name, and have not simulated the labels on their packages to those long

used by the manufacturer at Glen Cove, the question is whether the defendants have made such an unnecessary and unfair use of the name of Duryea as to deserve the unfavorable criticism of a Court of Equity."

The Court held that defendants had not made an unfair use of the name "Duryea" and should not be enjoined.

In the case of Walter Baker & Co., *vs.* Sanders, 80 Fed. Rep., 889, 895, the Court of Appeals of the Second Circuit referred to and distinguished the Duryea case from the Baker case, and held that the defendant might not use the surname Baker so as to announce upon labels and advertisements that the goods he sold were "Baker's Chocolate."

(B.) The case of Baker *vs.* Baker, 115 Fed. Rep., 297, 300, a decision by the Court of Appeals of the Second Circuit, is referred to. In its facts that case is clearly distinguishable from the case at bar. The defendant was a corporation of the name "Wm. H. Baker."

The Court said, "If the name had been selected unnecessarily and for the purpose of illegitimate competition with Complainant, we should not hesitate to enjoin it . . . . . but it was selected without any element of bad faith or unfair use, it was not a new name, and it represented a widely known concern engaged in a large business, which had acquired a valuable good-will. For reasons of convenience the owner concluded to reorganize the concern as a corporation and desiring to preserve the good-will, he chose the name with which the good-will was identified. He intended to remain the owner of the concern and has remained its owner as before.

As regards the Complainant, it is wholly immaterial whether the business is conducted as the name of a corporation, or that of an individual, by the same description."

This was simply the case of an *individual* who had traded under his own name, Wm. H. Baker,

and organized a corporation to carry on his own business under his own name. Manifestly there is no conflict between the Duryea and Baker cases and the case at bar. In the Baker case the defendant did not designate its goods as "Baker's Chocolate," but had adopted as a trade-mark the words "Justice Brand" and a figure of justice, and had otherwise differentiated its product from complainants'.

In the case at bar the proofs show that the Remington-Sholes Co. had adopted and was using not the name of any individual but an artificial name invented for a purpose: that the corporation was organized by a body of assosiates in which Franklin Remington had only one-twentieth interest; that is, owned 150 out of 3,000 shares of capital stock, and that the Remingtons had no prior skill in or knowledge of the typewriter business and were unknown to the public in connection with that industry. The proofs further show that the appellants had designated and advertised their machines as the "Remington-Sholes" typewriter, that they had used the name "Remington" both in their corporate name and upon their machines, and garnished the use of the name Remington in their advertisements and by word of mouth, in such a way as to lead the public to believe that their product had been made by the Remington Company, (Appellee's predecessor), whose name was a by-word for good workmanship the world over, and that the Remington-Sholes Co. was either the successor or a branch of the old Remington concern.

(C.) The case of American Cereal Co. *vs.* Eli Pettijohn Cereal Co. (72 Fed. Rep., 903, affirmed 76 Fed. Rep., 372), decided by the 7th circuit, is cited by Appellants (p. 27). In that case a preliminary injunction was granted which on motion of defendant was dissolved. The product in question was first manufactured and put upon the market by one Eli Pettijohn, defendant's predecessor in business, and

one of the organizers and incorporators of Defendant Co., under the name "Pettijohn Rolled Wheat." Prior to the organization of the Defendant Company it was sold under various names by Eli Pettijohn and his son, or by one of them as:

"Pettijohn Breakfast Gems."
"Pettijohn Breakfast Pearls."
"Pettijohn Breakfast Food."

The name "Pettijohn" was first associated with the product by Eli Pettijohn (the father), who was engaged in the manufacture and sale of the product in the State of California for about fifteen years. During all of these years, the name "Pettijohn" was applied to this product, whether manufactured by the father or the son, or by the successors of both or either of them. The plaintiff claimed the title to the name as applied to this product through grant by the son, and the defendant through grant by the father. It being doubtful whether the father ever parted with his right to such use to his name, and whether the son ever acquired the *exclusive* use thereof, in the manufacture and sale of the breakfast food, and whether they were not both entitled to use the name Pettijohn as tenants in common, the Court of Appeals held that the complainant's title to the name was not sufficiently clear to warrant the issuance of a preliminary injunction. It is manifest that in this case the right and title of the defendant to use the name Eli Pettijohn was as good, if not better, than that of the plaintiff. The evidence in that case showed that Eli Pettijohn was the originator and *pioneer* in the manufacture and sale of "Pettijohn Breakfast Food," and that at the time of the organization of defendant corporation, he had an established business and good will that had been carried on by him for upwards of fifteen years. He caused a corporation to be organized to take over and carry on this *existing business* in which he continued to be

actively engaged. To this corporation he gave his full name, "Eli Pettijohn."

Manifestly these facts plainly distinguish this case from the case at bar.

(D.) The paragraph in the opinion of Mr. Justice Bradley in Celluloid Mfg. Co. *v.* Cellonite Mfg. Co. (32 F. R., 94) from which the excerpt in Petitioner's Brief is quoted (p. 25) reads as follows:

"As to the imitation of the Complainant's name. The fact that both are corporate names is of no consequence in this connection. They are the business names by which the parties are known, and are to be dealt with precisely as if they were the name of private firms or partnerships. The defendant's name was of its own chosing, and, if an unlawful imitation of the Complainant's, is subject to the same rules of law as if it were the name of an unincorporated firm or company. It is not identical with the Complainant's name. That would be too gross an invasion of the Complainant's right. Similarity, not identity, is the usual recourse when one party seeks to benefit himself by the good name of another. What similarity is sufficient to effect the object has to be determined in each case by its own circumstances. We may say, generally, that a similarity which would be likely to deceive or mislead an ordinary unsuspecting customer is obnoxious to the law. Judged by this standard, it seems to me that, considering the nature and circumstances of this case, the name "Cellonite Manufacturing Company" is sufficiently similar to that of the "Celluloid Manufacturing Company" to amount to an infringement of the Complainant's trade-name. The distinguishing words in both names are rather unusual ones, but supposed to have the same sense. Their general similarity, added to the identity of the other parts of the names, makes a whole which is calculated to mislead."

The learned Justice in determining the question whether the defendant's name was a simulated one, which was obnoxious to equity, applied the test of "a similarity which would be likely to deceive or mislead an ordinary unsuspecting customer."

But he pointed out what similarity was sufficient, "*has to be determined in each case by its own circumstances.*"

It is not seen that there is any conflict between the proposition quoted from the opinion of Justice Bradley, in the case cited, and any proposition enunciated or held by the Court of Appeals in the case at bar.

(E.) In the case of Continental Insurance Co. *v.* Continental Fire Ass'n (96 F. R., 846, affd. 101 Fed. R., 255, Referred to in Petitioner's Brief, p. 29), the Court held that the word "Continental" being a geographical term was *publici juris*, and that the Complainant could acquire no exclusive right to the use thereof. There being an absence of proof of any fraudulent intent or conduct on the part of the defendant, or that the public had been deceived by any similarity between the names, a preliminary injunction was refused. It is to be noted that in this case the Court recognized the familiar rule that **"Relief by injunction is sometimes granted in cases where the party enjoined is using as a trade-name a term which is geographical or descriptive in character, and, therefore, could not be exclusively appropriated by the party securing relief."**

The Court pointed out that relief is granted in this class of cases not because the complainant had the *exclusive right* to appropriate the word or term, but because the defendant had fraudulently and deceitfully adopted the words, and methods of use, with the purpose and intention of attracting customers away from his rival to himself.

The foregoing authorities are all those decided by the U. S. Circuit Courts, which it is alleged are in

conflict with the decisions of the Court in this case or with one another.

It is submitted that a careful examination of these cases fails to disclose any lack of harmony among them in respect of the legal principals therein involved.

The other cases cited by the learned counsel for appellants, as in conflict with the decisions in the case at bar, are decisions of sundry State Courts.

(F) The case of Meneely *v.* Meneely (1 Hun., 673, affirmed 62 N. Y., 427) decided by the Supreme Court and Court of Appeals of N. Y. State, has been pressed upon the attention of the Court here as an authority repugnant to the decisions. In that case the defendants, Clinton H. Meneely and Geo. H. Kimberly were sued jointly as partners trading under the firm name of Meneely & Kimberly. The Court below issued an injunction which prohibited the use by defendant Clinton H. Meneely of his name *in any way*.

The Court found that defendants had not used, in business, the firm name or any part of the name by which the plaintiffs had theretofore been known to the public, nor had defendants designated their product as "Meneely Bells" or "Meneely-Kimberly Bells"; nor had there been any attempt by any act or artifice to appropriate the good will of the old business to which plaintiffs had succeeded. On this state of facts the Court of Appeals held (1) that the injunction granted by the Court below was too broad in that it enjoined Clinton H. Meneely, an individual, from using his patronymic "*in any way*," and (2) there being no evidence that defendants had resorted to any artifice or contrivance to produce the belief or make it appear that the establishment of the defendants was that of plaintiffs, or connected therewith, an injunction *was unwarranted*.

This case is referred to by the N. Y. Court of Appeals in Chas. S. Higgins Co. *v.* Higgins Soap Co., 144 N. Y., 462, as an authority upon the propo-

sition that any person may use in his business his family name, provided he uses it honestly and without artifice or deception; but that Court did not find anything in the Meneely case that was in conflict with any of the propositions enunciated or the conclusions reached in the Higgins case.

Anything stated in the opinions in the Meneely case from which an inference could be drawn in conflict with the decision there, must be regarded as overruled by the Higgins case.

(G) Two other N. Y. cases are referred to—The Scott Stamp & Coin Co., Ltd. *v.* T. W. Scott Co., Ltd. (15 N. Y. Supp., 325), and Employers, Etc. Co. *v.* Employers Etc. Co., 10 N. Y. Supp., 845.

These cases are so clearly distinguishable in their facts from the case at bar that it is not deemed necessary to trespass upon the time of this Court to discuss them in detail.

Suffice it to say that both of these New York cases were decided long prior to the Higgins case (*supra*), and the De Long cases (32 N. Y. Supp., 203; aff. 35 N. Y. Supp., 509), and hence any expressions of opinion therein that are in conflict with any legal conclusions reached in the De Long and Higgins cases must be regarded as overruled.

(H) The case of S. Chivers & Sons *v.* Chivers & Co., Ltd., 25 Trade Mark Red., 289 (cited by Appellants, p. 30), is wholly unlike the case before the Court here. An examination of the facts in that case will disclose (1) that the plaintiff failed to establish that the name "Chivers" had acquired a *secondary* meaning in the trade as denoting the plaintiff's jellies, (2) that the defendant was the successor in business of an *old concern* which had been long engaged in the jam trade (of which jellies was a by-product), under the name S. Chivers & Co., and (3) that defendant had not designated its product as "Chiver's Jellies," and had resorted to no artifice or act calculated to produce confusion in the

mind of the public (see Kerly on Trade-Marks, 2d Edition, pp. 506–7).

(I) Another case referred to in Appellants' Brief (p. 27) is Hazelton Boiler Co. *v.* Hazelton Tripod Boiler Co. (142 Ill., 494) decided by the Supreme Court of Illinois.

The facts in that case are not anologous to the case at bar, and the doctrine of that case, as was clearly pointed out by the learned Court of Appeals of Seventh Circuit in the Peck Bros. case (113 F. R., 291, at pp. 299–302), is not in accord with the decisions of the Federal and other State Courts.

(J). The counsel for the defendant-appellants earnestly argued in their brief in the court below, that the decision in this case was in conflict with that of this court in the case of Goodyear Company *v.* Goodyear Rubber Co. (128 U. S., 598). An examination of the Goodyear case will disclose that it has no application to the state of facts existing here. The suit was instituted by the Goodyear Rubber Company, a corporation organized *in 1872* against the Goodyear India Rubber Glove Manufacturing Company. The defendant appeared and filed a cross bill claiming that it was prior to and had the exclusive right to designate its goods by the term "Goodyear Rubber." It appeared by proofs that the defendant was organized as a corporation under the name, in Connecticut *in 1847*, for the purpose of manufacturing India Rubber goods, and in 1849 obtained license for their manufacture under patents of Chas. Goodyear, and continued in that business during the existence of those patents, and that after their expiration in 1865 and continuously since, it had manufactured and sold very largely all kinds and classes of india rubber goods treated according to the patents of Goodyear (page 600-1).

It also appeared that the names "Goodyear Rubber" did not indicate in the trade, a particular

manufacturer, but *were terms descriptive of goods produced by a process known as Goodyear's invention.* On this state of facts the court held (first), that if any exclusive right to the name existed, that right would seem to belong to the defendant rather than to the plaintiff, but (second), that as the words Goodyear Rubber indicated in the trade goods manufactured according to a particular process covered by patents which had expired, that these words had become *publici juris*, and could not be exclusively appropriated by any one.

In the course of the opinion written by Mr. Justice Field it is said:

> "The proofs in the case show very clearly "that Goodyear's India Rubber Glove Manufac- "turing Company had, as alleged in its answer, "been for many years in the use of abbreviations "in the designation of its company, using some- "times a name similar to the corporate name of "the plaintiff; and if any exclusive right to the "abbreviated name were to follow from its pro- "tracted use, that right would seem to belong to "that company rather than to the plaintiff. "But the name of 'Goodyear Rubber Com- "pany' is not capable of exclusive appro- "priation. 'Goodyear Rubber' are terms "descriptive of well-known classes of goods "produced by the process known Goodyear's "invention. Names which are thus descriptive "of a class of goods cannot be exclusively ap- "propriated by any one."

We submit that the decision has no bearing upon the case here, where it is shown that the name "Remington" has *acquired a secondary meaning in the trade as designating the product, good-will and business of the complainant-appellee.*

The Goodyear case is analogous to the case of the Canal Co. *v.* Clarke, 13 Wall, 311, a similar case where the words sought to be appropriated were

words in common use having no other signification than there ordinary one and not pointing to any particular manufacturer or business.

(K.) Finally the case of Monarch *v.* Rosenfeld, et al., 39 So. W. Rep., 236, was referred to by the defendants-appellants, and excerpts from the opinion in that case were quoted in the brief below. While apart from the facts some observations of the Court may seem to support appellants' argument here, yet when read in the light of the facts they are seen to have no bearing. A suit had been instituted against S. I. Monarch to enjoin him from using his name in connection with the sale of whisky and an *injunction had been issued enjoining him from using the name of Monarch so as to deceive purchasers or cause confusion with the plaintiff's goods.*

It was alleged that he had violated this injunction and a motion was made to punish him for contempt. The alleged violation consisted in his selling goods manufactured under a contract with the Rock Spring Distilling Co., which goods were marked with the name S. I. Monarch, and the Court, in interpreting the decree of the Court below, held that as the defendant Monarch was simply enjoined from using his name in business in such a manner as to cause deception and as no proof was shown that he was using his name in a deceptive manner he was not in contempt. The mere fact that he did not manufacture the goods personally but had them manufactured for him under the contract with a corporation in which he was interested was not a violation of the injunction.

**All the cases relied on by the defendants-appellants in the Courts below are clearly distinguishable from the case at bar.**

We submit that there is no doubt that when the Remington-Sholes Company and its predecessor entered the typewriter field appellee had a world-wide reputation, which had accrued and was established through the manufacture and sale of the Remington typewriter.

There is no doubt that the purpose of the promoters and organizers of the Illinois corporations was to borrow the name of persons, who were unknown and unskilled in the typewriter business, to personate the name of a concern and a machine that were famous in that business.

There is no doubt that the selection of the name "Remington-Sholes" was an "intelligent" choice, and one that naturally suggested to the ordinary unsuspecting purchaser that appellants' product had been made by the "Remington concern," whose name was a "by-word for good workmanship the world over."

There is no doubt that the promoters and organizers of the corporations *knew* when they selected that name that its presence on their machines "would be a constant temptation, often yielded to by whomsoever sold one to the uninstructed purchaser, to represent that it was the 'real' or the 'improved' Remington; that the presence of the name made confusion easy; and that the results of any confusion would be entirely in their favor."

There is no doubt that the appellants, their predecessor, and their agents and so-called dealers represented to the public, both in advertisements and by word of mouth, that the Remington-Sholes machine was the "new and improved Remington," and that it was a "genuine Remington"; that it was the only machine then made by a Remington; that it represented the second generation of typewriter manufacturers bearing this great name, Remington, and that the same standard of excellence was being maintained in the manufacture of their machines as all other goods which were produced by the Remingtons.

There is no doubt that their purpose was to impress upon the public the belief that their business was a continuation of the character and business of the original Remington concern, whose typewriter business appellee succeeded to, and also to cause the public to believe that their machine was "a Remington."

There is no doubt that appellants and their predecessor sought, in many ways and in many connections, to associate their machines and business with appellee's and it predecessor's machines and business, thereby "unfairly stealing away another's business and good will." (32 Fed., Rep. 97).

**The decree of the Court of Appeals in favor of appellee, so far as the decree was rendered, should be affirmed, but the cause should be remanded to the court below, with instructions to enter a decree which shall also enjoin against the use of the abbreviated name "Rem-Sho."**

EDMUND WETMORE,
HENRY D. DONNELLY,
WILLIAM W. DODGE,
ARCHIBALD COX.

# Supreme Court of the United States

OCTOBER TERM, [illegible]

[illegible]

[illegible]

[illegible]

HOWE SCALE COMPANY OF 1886
AND FAY-SHOLES COMPANY,
*Defendants-Appellants,*

vs.

WYCKOFF, SEAMANS & BENEDICT,
*Complainant-Appellee.*

No. 130

# Brief of Argument for Complainant-Appellee on Appeal from Order Denying the Defendants-Appellants' Motion to Suppress Evidence

EDMUND WETMORE,
HENRY D. DONNELLY,
WM. W. DODGE,
PAUL ARMITAGE,
*Counsel for Appellee.*

[illegible]

# Supreme Court of the United States,

OCTOBER TERM, 1904.

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HOWE SCALE COMPANY of 1886 and FAY SHOLES COMPANY,
Defendants-Appellants,

*vs.*

WYCKOFF, SEAMANS & BENEDICT,
Complainant-Appellee.

No. 130.

## BRIEF FOR APPELLEE ON MOTION TO SUPPRESS.

**No error can be predicated on the denial by the lower court of defendant's motion to expunge from the record certain testimony alleged to be objectionable, or to tax the costs thereof against complainant.**

### STATEMENT.

During the taking of the *prima facie* and rebutting proofs in this cause, divers objections were made by defendant to evidence introduced by complainant; and, at final hearing, a motion was made by defendant that these portions of the depositions "be suppressed or stricken from the record for the reasons stated in the objections upon the record" (pp. 1440–1443).

The motion was overruled (p. 1496) and this was one of the alleged errors specified in the Assignment of Errors below (see Eighth Assignment, pp. 1511–12) and in the petition for the writ of certiorari to this Court (Petition, p. 17).

It may be convenient to give in advance a

**SYNOPSIS OF ARGUMENT**

in regard to this motion.

Complainant contends that:

(A) Under the prevailing equity practice the Court below had no power to strike from the record testimony taken before the Examiner under objection.

(B) On an appeal in an equity cause, no reversal will be had for the admission of incompetent evidence, *provided there is, in the record, sufficient other competent evidence to sustain the decree.*

(C) That the evidence sought to be suppressed was both competent and material, and

(D) No motion was made to tax the costs against complainant.

Let us examine these seriatim:

**(A) Under the prevailing equity practice the Court below had no power to strike from the record or to suppress testimony taken before the Examiner under objection.**

The testimony objected to had to come here upon this appeal as part of the record. It might be disregarded as immaterial or otherwise incompetent, but it could not be stricken from the record.

Blease *v.* Garlington, 92 U. S. *1*

The practice outlined in this case by the Supreme Court has been uniformly followed in the Circuit and District Courts. See Appelton *v.* Ecaubert, 45 Fed. Rep., 281. Parisian Comb Co. *v.* Eschwege, 92 F. R., 721. Fayerweather *v.* Rich, 89 F. R., 529.

MacWilliam *v.* Webb Co., 119 F. R , 509. *In re* Lipset, 119 F. R., 379. *In re* Gottardi, 114 F. R., 328. Adee *v.* Iron Works, 46 F. R., 39. Lloyd *v.* Pennie, 50 F. R., 4. Ammunition Co. *v.* Firearms Co., 103 F. R., 39.

A corollary to the above proposition is that—

**(B) On an appeal in an equity cause in the United States Courts no reversal will be predicated on the admission of incompetent or imm - terial evidence, provided there is in the record sufficient other competent evidence to sustain the decree.**

Ruckman *v.* Cory,, 129 U. S., 387.
Gorham Mfg, Co. *v.* Dry Goods Co., 104 Fed. Rep., 243.

The purpose of the rule is that the Appelate Court rejecting incompetent testimony, even though considered below, and considering competent testimony, even though rejected below, may render such final decree as the equities of the case require.

In fact, defendant's counsel frankly conceded this in his brief in the Court of Appeals (p. 17).

To quote his words, "all that can be accomplished by a motion of this character is to direct attention to the objections."

Without more, we might safely rely on these well settled rules in equity cases as a complete answer to the alleged error in respect to the denial of this motion.

But aside from this, we submit that

**(C) The evidence sought to be suppressed and stricken from the record by the defendant's motion was both relevant and competent.**

The notice of motion covers such a quantity of testimony and multiplicity of subjects that it will be impossible to consider all the objections in detail.

In reading the testimony this Court will be in a position to pass upon the propriety thereof, as they arise.

In view, however, of the fact that the motion is an attempt to emphasize defendant's objections to portions of the testimony, dealing with certain subject matters, it will be advisable to refer to same.

## DEFENDANT'S MOTION.

Defendant subdivided its notice of motion into five paragraphs.

Broadly, it was sought to strike from the record thereby testimony having reference to the following subject matters :

(1.) The testimony and exhibits relating to the formation of "The Z. G. Sholes Company" and the machine designated "The Z. G. Sholes" (Subdiv. 1, Rec., p. 1440).

(2.) Certain testimony offered by complainant *on rebuttal*, tending to show confusion in the trade, and also establishing the character of the purchasers and ~~consumers~~ users of typewriting machines, and their unfamiliarity with the structure, operation or physical characteristics of such machines.

Subdiv. 2, p. 1441.

(3.) Certain testimony relating to the acts, statements, advertisements and manner of doing business of the Remington-Sholes Co. and its agents, dealers and middlemen in the sale of machines in foreign countries, including Russia, France, Germany, Denmark and Canada.

Subdiv. 3, 4, and 5, p. 1441–2.

Let us examine these in the order named :

**(1.) The evidence relating to the "Z. G. Sholes" machine and to the organization of "The Z. G. Sholes Company" was clearly relevant and material, in order (a) to place before the Court the history of the Remington-Sholes Company, and (b) to establish the unnecessary selection of the name "Remington" as a designation of the defendant's machine.**

The evidence referred to (Subdiv. 1, p. 1440) is found in deposition of Z. G. Sholes (Qs. 23–87, pp. 392–406), also articles of association of "The Z. G. Sholes Company" (pp. 816–824), and photograph of the "Z. G. Sholes" typewriter (p. 824).

The testimony is, in substance, that Sholes made certain improvements in typewriting machines, for which he filed application for letters patent; that models were built and finally a full sized machine; that in May, 1893, a corporation was formed under the laws of Wisconsin; that as Sholes was the inventor of the machine it was, naturally, called "The Z. G. Sholes" typewriter and the corporation "The Z. G. Sholes Company."

In a case like that at bar, in which the motives and intent of the parties engaged in an unlawful and a fraudulent scheme are pertinent, it was eminently proper to place before the Court the history of the transaction of the Remington-Sholes Company preceding the organization thereof.

The evidence was also material as establishing that the body of associates who organized the "Remington-Sholes Typewriter Corporation" *unnecessarily* chose the name "Remington" as a part of its corporate name and product.

A corporation was already in existence. The machine was already baptized with the name of its inventor "Sholes." Why change it?

The inference is irresistable that the change was made with the intention to initiate an inequitable competition with complainant.

Cases in which evidence of this character has been introduced and commented upon with approval by the Court are numerous. We beg leave to refer to the following for illustration:

> Stuart *v.* F. G. Stewart Co., 91 Fed. Rep., 243; Garrett *v.* T. H. Garrett & Co., 78 Fed. Rep., 472; R. W. Rogers Co. *v.* William Rogers Mfg. Co., 70 Fed. Rep., 1017; International Silver Co. *v.* Simeon L. & Geo. H. Rogers Co., 110 Fed.

Rep., 955; Gray *v.* Taper Sleeve Pulley Works, 16 Fed. Rep., 436; Celluloid Co. *v.* Cellonite Co., 32 Fed. Rep., 94; Fuller *v.* Huff, 104 Fed. Rep., 141; International Silver Co. *v.* Wm. G. Rogers Co., *et al.*, 113 Fed. Rep., 526; The Peck Bros. & Co. *v.* Peck Bros. Co., *et al.*, 113 Fed. Rep., 291.

**(2). That part of defendant's motion by which it is sought to strike out certain testimony as not proper rebuttal, raises a question of the order of proof merely. This was a matter within the discretion of the Trial Court and its ruling in that respect will not be reviewed on appeal.**

This evidence is referred to in Subdivision 2 of defendant's notice of motion (p. 1441).

It is conceded that the evidence is material, but, it is argued, it should have been introduced on *prima facie* proofs.

In overruling this portion of the motion, the trial Court said, "Perhaps some of the testimony taken in rebuttal is not strictly such, but is rather cumulative; still it is such as would be admissible, if taken at the proper time, or, with leave, and as the motion has been brought along by consent to the hearing in chief, and the testimony might be the subject of a motion to retake, without intending to relax the rule as to order, it is deemed best, under the circumstances, that this testimony be left to stand for what it is worth" (p. 1496).

This decision, we submit, is conclusive on appeal.

"As a matter of law, the order of proof in the trial Court is within the discretion of the trial judge, and his rulings in that respect cannot be reviewed in error."

Turner *v.* United States, 66 Fed. Rep., 280 at 284-5. (Pardee, *J.*, for Circuit Court of Appeals).

See also Kansas City *v* McDonald, 61 Fed. Rep., 178 at 182.
Anheuser Busch Brewing Case, 87 Fed. Rep., 864, 868.
Railway Co. *v.* McDonald, 51 Fed. Rep., 178.
Marshall *v.* Davies, 78 N. Y., 414, 420.
Agate *v.* Morrison, 84 N. Y., 672, 673.
Clays *v.* Ferris, 10 Vt., 112.
Dane *v.* Treat, 35 Me., 192.
Ford *v.* Miles, 1 Hill (N. Y.), 300.
Hasting *v.* Palmer, 20 Wend. (N. Y.), 225.

Furthermore, no harm resulted thereby, for defendant had ample opportunity to reply to such evidence and *availed itself thereof by adducing such proofs on surrebuttal as it deemed necessary.*

(Pp. 1372–1439).

Finally, the notice of motion was too broad Certain portions of the depositions sought to be eliminated from the case were plainly proper rebuttal.

Drexel *v.* True, 74 Fed. Rep., 12.
Amer. Express *v.* Langford, 93 Fed. Rep., 380.

The defendant in its answer and by its proofs sought to maintain that its machine was sold by the arbitrary and fanciful term "Rem-Sho."

(Answer paragraphs 13 and 14, pp. 25–26; see also evidence Baldwin, pp. 1012, 1013; Hatch, pp. 1051–53; Hochklassen, pp. 1102, 1106).

It was therefore competent and proper for complainant to prove *in rebuttal* that the designation "Rem-Sho" was a mere abbreviation of the name "Remington Sholes," and so understood by the trade.

**(3). The testimony relating to the acts, advertisements, and mode of doing business of dealers**

**and middlemen in the sale of the machines of the Remington-Sholes Company in foreign countries, sought to be stricken out, was clearly relevant to the issues in this case because (a) it showed the likelihood of deception of the ultimate purchaser abroad; (b) because it was a practical demonstration of how the name "Remington-Sholes" could be used by unscrupulous dealers as an instrument of fraud; (c) because it was part of the res gestae; (d) because the manufacturers and dealers being co-conspirators and tort-feasors, the acts and declarations of any in furtherance of the common scheme are relevant against all, and (e) because the action being one in fraud, great latitude is allowed in the admission of evidence.**

This evidence is all covered by subdivisions 3, 4 and 5, of defendant's notice of motion and consists of:

(*a*) Various advertisements of dealers and agents for the *Remington-Sholes typewriter* in Russia, France, Germany, Denmark, England and Canada, containing grossly misleading and false statements with regard to the origin and manufacture of the Remington-Sholes typewriter, and tending to link or connect the business of the Remington-Sholes Company with complainants', and produce an impression in the minds of the public that the *defendant's machine was a product of complainant, and was the genuine "Remington" writing machine.*

In this connection the attention of the Court is invited to the various advertisements of one T. I. Hagen, *who is the exclusive dealer in Russia for the sale of the Remington-Sholes machine*, and who advertised it not only as the "Remington-Sholes" (Record, pp. 893, 986), but, also, as the "Remington Imperial" (Record, pp. 889, 895), and among other things said "The factory, Remington Standard does not belong to any of Remingtons and passed into new hands, Wycoff, Seamans & Benedict long ago, *at the time when F. Remington and Mr. Sholes, the*

*inventor of all Remingtons, left the business and established a factory of their own, conducted the same on as solid a basis as before.*" (See Record, p. 889. Deposition of Leo Nabokoff, Record, pp. 502-507. Deposition of Jones, Record, pp. 507-509 and John Volk, Record, pp. 464-466.)

Also various advertisements and publications of dealers and agents in Russia, Denmark, Canada, etc., referring to the Remington-Sholes machines as "Remington Typewriters," the "Genuine Remingtons," the "Little Remington," "New Model Remington," etc. (Record, pp. 885, 897, 898, 978, 889-891, 901, 986.) Also advertisements referring to the "Remington-Sholes" machine as "The only typewriter manufactured by a member of the well-known Remington family, the original manufacturers of the Remington Standard Typewriter." (Record, pp. 905, 908, 909, 973.) And again defendant's machine is referred to as "The only machine now manufactured by Mr. Remington," and it is further stated that "Mr. Franklin Remington, son and grandson of the old and celebrated American house, is the only member of that family now engaged in the manufacture of typewriters, and it is to him that we owe the greatly appreciated 'Rem-Sho' typewriter." (Record, p. 997.) Again in "Remington-Sholes Syndicate Prospectus" it is said: "Mr. Franklin Remington, founder of the Remington-Sholes Company, will join the board after allotment, his connection with this syndicate and the parent company in America, is a guaranty that the 'Rem-Sho' machine embodies the latest and best improvements known in typewriting machines, representing as he does the second generation of the family in the business—his father being the original maker of the Remington Standard Typewriter." (P. 905.)

It is stipulated that the person referred to in said publication is Mr. Franklin Remington, the manager of the "Remington-Sholes Company," and *that the statement in said prospectus was made with his consent and approval.* (Record p. 457.)

(*b*) A copy of an admitted affidavit or other evidence referred to is that of the same Franklin Remington, made by him in Russia before a U. S. Consul, for the purpose of publication, and printed in a Russian newspaper circulated in Moscow, stating that he "is the son of the original inventor of Remington typewriters," and "the only descendant of Remington at the present time engaged in the manufacture of typewriters," and that "*all other machines bearing the name 'Remington' are made and sold by other parties, who exclusively in the interest of their own material advantage make use of the name 'Remington.'*" (Record, p. 983. As to stipulation concerning this publication, see pp. 660, 661.)

(*c*) Testimony of a retrospective exhibit, so called, of the *Remington-Sholes Company* at the Paris Exposition, of an original machine manufactured by complainant's predecessors, with a notice thereon stating that it was invented "by the father of the inventor of the Rem-Sho, which was later improved and manufactured by E. Remington & Sons." (Pp. 1001-1002, Testimony of McClain, pp. 610-611; Wallau, 612-617.)

(*d*) Also the testimony of John F. McClain showing that the average or ordinary purchaser of typewriters abroad is unfamiliar with the structure, mode of operation and physical appearance of complainant's machines, and that the same are very largely sold in foreign countries, and are there known, identified, offered for sale and sold as the "Remington." (Record, p. 606).

The defendant claims that this testimony as to the acts and transactions of dealers and middlemen in foreign countries, not shown to be the agents of the Howe Scale Company, or of the Remington-Sholes Company, is not relevant to the issues here, because (a) it is not shown that these acts and advertisements were authorized by the defendant or Remington-Sholes Company and (b) because the

testimony calls for matters transpiring in foreign countries and determinable by the laws of such countries. (See objection to same, pp. 608–9).

In overruling this branch of defendant's motion, the Court below held: that the evidence was relevant, (a) because it related to machines eminating from the Remington-Sholes Company under whom the defendant, the Howe Scale Company, had acted and justified; (b) because it related to transactions in respect of such machines in connection with the complainant's machines and its trade name, and although not proceeding directly from the Remington-Sholes Company, or from the Howe Scale Company, or authorized by either, was admissible as part of the *res gestae* for the purpose of showing the effect upon complainant's trade of putting the machines of the Remington-Sholes Company into the markets with the name "Remington upon them; and that this being a suit for interference in trade—unfair competition—the boundaries of the dealings, or trade, and not of governments or countries, were material in determining the question whether or not the ultimate purchaser was likely to be deceived or mislead; and finally, that the laws of foreign countries would not govern or vary the rights of parties here in respect to fraudulent transactions emanating here, although carried out and consummated in foreign countries (see opinion, Rec., pp. 1496–1497).

Attention is called in passing to the fact that a large portion of the testimony sought to be stricken out consists of the authorized statements, affidavits and advertisements of Franklin Remington, the admitted manager and agent of the Remington-Sholes Company.

Manifestly, however, the defendant's contention proceeds on a mistaken and narrow theory of the issues involved in this litigation. The question to be determined here by the Court is whether or no the means employed by the defendant and by the Remington Sholes Company, under whom it justi-

ties, and the designations used by them in their business and on their product, tend unfairly to divert trade from the complainant and attract it to the defendant and the Remington Sholes Company, and whether their acts constitute an unfair and fraudulent competition which equity will arrest.

**In its last analysis, the test of infringement is this: Is the objectionable mark, trade name, device or symbol, calculated to deceive the ultimate purchaser or the consumer of the goods.**

Mr. Kerly, in his valuable work on Trade Marks (London, 1901), at page 224, says: "The persons to be considered in estimating whether the resemblance between the marks in question is calculated to deceive, are all those who are likely to become purchasers of the goods upon which the marks are used." And again (page 225), "**Nor is the inquiry to be confined to England, or persons acquainted with the English language, in cases where the goods in question have a foreign market.**" The same test is also adopted in Fairbank Co. *v.* Bell Mfg. Co., 77 Fed. Rep., 869 at 878.

Johnson *v.* Orr-Ewing, 77 App. Cases, 219 (1882).

Wilkinson *v.* Griffith, 8 R. P. C., 374 (891).

Singer Mfg Co., *v.* Loog, 10 C. D., 412.

Seabastian's Law of Trade Marks, 4 ed., pp. 6, 116, 133, 158, 164, 221.

As is well stated by Chitty, *J.*, in Lever Bros. *v.* Goodwin, 36 C. D., 1: "Now, it has been said more than once in this case that the *manufacturer* ought not to be liable for the fraud of the ultimate seller, that is, the shopkeeper or the shopkeeper's assistant; but that is not the true view. The question is whether the defendants have or have not knowingly put in the hands of the retail dealers the means of deceiving the ultimate purchaser."

Indeed, this test of infringement was not disputed by the learned counsel for the defendant in his brief in the Court below. He there says, "we quite agree with counsel that the deception of the ultimate purchaser is a rightful test of infringement" (p. 21).

*The inquiry, therefore, becomes as broad as the market where complainant's goods are sold. It is not limited to the particular country where the action happens to be brought, but extends to those countries and states where the goods come into competition with the goods bearing the infringing names or devices used by the defendant, for it is there that the ultimate purchaser or consumer is to be found.*

It is an admitted fact in this case that complainant's machines are sold in foreign countries, and among others in Russia, France, Germany, Denmark, England and Canada. It is also an admitted fact that the machines produced by the Remington-Sholes Company, and bearing the name "Remington," are sold also in those countries in competition with complainant's goods.

The evidence, therefore, regarding the circumstances attending the sale of defendant's machines under the name and designation "Remington-Sholes" and "Rem-Sho" in these foreign markets became pertinent and illuminative on the question of infringement.

We submit the Court below was right in holding that the boundries of dealings and not of countries constituted the limits of investigation.

It was not sought to charge the defendant, the Howe Scale Company, with the acts of independent dealers or middlemen, who sold the Remington-Sholes machines in foreign countries. The evidence was introduced for no such purpose. It was with the object of aiding and assisting the Court in determining whether the use of the name "Remington" by the defendant and its principals was likely to mislead the ultimate purchaser wherever found.

In other words, the evidence was admissible as a part of the *res gestae* for the purpose of showing the actual effect upon complainant's trade of permitting the defendant and its principals to put machines into the market with the name "Remington" upon them. This evidence was in the nature of a practical demonstration of how the designation of "Remington-Sholes" and the abbreviated term "Rem-Sho" might be used and were in fact being used by unscrupulous dealers and middlemen to deceive and hoodwink the ultimate purchaser.

Some point was made in the Court below, and may be here, that because this suit was originally brought against the Howe Scale Company, the sales agent for the United States of the Remington-Sholes Company. and because the bill charged infringement solely within this country, the evidence should be limited to acts arising in the United States. Any force that may have existed in this argument as applied to the action as originally brought has ceased, we submit, by reason of the intervention of the Remington-Sholes Company, now Fay-Sholes Co., as a defendant in this action, and by the alleged justification of the Howe Scale Company under the right and title of the Remington-Sholes Company.

On its own motion, the Remington-Sholes Company openly intervened in this action, assumed the burden of defense, employed counsel, examined and cross-examined the witnesses, and agreed to indemnify and save harmless the defendant Howe Scale Company (p. 158); and one of the petitioners for the writ of certiorari was the "Fay-Sholes Company" [The Remington-Sholes Company], and among the grounds urged for the issuance of the writ was that "The defense of this cause has from its inception been conducted wholly at the expense of your petitioner, Fay-Sholes Company, and by counsel of its own selection." (See Petition, p. 11.)

By its acts, therefore, the Remington-Sholes Company became the real defendant, and the decision of the issues involved in this appeal will finally de-

termine its right as well as that of the Howe Scale Company to the use of the name "Remington" upon and in connection with the manufacture and sale of typewriters.

Black on Judgments, Sec. 640.

Both the Circuit Court in its opinion (Rec., p. 1496) and the Circuit Court of Appeals in its opinion treat the Remington-Sholes Company as the real defendant. In the opinion of the latter Court it said: "The nominal defendant is a sales agent only, the real defendant which has assumed the defense of the suit is the Remington-Sholes Company of Chicago, Ill." (P. 1521.)

In view of these facts it is hard to see any force in the defendant's argument that because the bill was originally filed against the sales agent in the United States it should be limited to transactions occurring therein. It was a proven and conceded fact in this case that the market of the Remington-Sholes Company was co-incident with the complainant, and that it had sold its machines in Russia, Germany, England, Canada, Denmark and Sweden. Its catalogue and other advertising media show that it had offices in these foreign countries, and its petition for the writ of certiorari to this Court stated that its typewriting machines "were being extensively sold not only in all the principal cities in this country, but also in the principal cities of most of the civilized countries throughout the world" (Petition, p. 6.)

The Remington-Sholes, therefore, being the real defendant in this action, the acts of its dealers and representatives, and of middlemen selling its goods, whether here or in foreign countries to which it sent them, and in which they came in competition with the complainant's goods, were material and relevant on the issue of infringement.

But there is another point of view from which this evidence became relevant.

It has frequently been held in cases brought for the infringement of trade names—"passing off"—*that the manufacturer who purchases, and the dealer who sells the article with the spurious name, mark or symbol upon it are to be considered as co-conspirators and joint tortfeasors combining and confederating together to filch the good-will and reputation of another.*

If this statement is a correct exposition of the law, the acts and statements of all dealers who sell the infringing machines are the acts and statements of persons conspiring together in the furtherance of a joint scheme to defraud and, under the well-known rule, are admissable in evidence against one another.

Stephens on Evidence, p. 10.

Once again, the *gravamen* of the bill of complaint here is fraud, and fraud being difficult of proof, and generally to be inferred from facts and circumstances, the rule is established that *great latitude* is allowed in such cases in the admission of evidence. Every circumstance in the condition and relation of the parties, and every act or declaration may be shown which bears upon the transaction under investigation. Am. and Eng. of Law (2nd Ed.), Vol. 14, pp. 195, 196.

Furthermore, one of the grounds urged with much insistance by the defendant and the Fay-Sholes Company in the petition and brief for the *writ of certiorari* was that the typewriting machines of the Remington-Sholes Company "had been extensively sold in many foreign countries and particularly in the German Empire, in France, Denmark, Norway, Russia and Austria by dealers in said several countries"; that such dealers had been threatened with suits by the complainant; that in fact one suit had been instituted and said petitioners feared that "serious injury may result to dealers in Germany and other foreign countries" and "to the foreign trade of your said petitioner if the said

decision of said Circuit Court of Appeals for the Second Circuit in this cause is allowed to stand uncorrected."

(Petition, paragraph 9, pp. 12–13. Brief submitted therewith, pp. 34–35).

If this Court is to consider the effect of the decision below on the foreign dealers and agents of the "Remington-Sholes" machines and the possibility of injury to such dealers thereby is to be taken as a factor in reaching a decision here, it is clear that evidence of the character and acts of such dealers and their grossly misleading representations can be offered by the complainant.

In support, of its contention, defendant's counsel cited in the Court below several cases and the same will probably be referred to here. Among these were the cases of Coats *v.* Merrick, 149 U. S., 562; Brown Chemical Co. *v.* Meyers, 139 U. S., 540; Proctor & Gamble Co. *v.* Globe Refining Co., 92 Fed. Rep., 357, and Sterling Remedy Co. *v.* Eureka, etc. Co., 80 Fed. Rep, 105. And various excerpts were made from the opinions in these cases to the effect that the manufacturer would not be held responsible for the frauds of independent dealers.

A critical examination in these cases will show that no one of them militates against the complainant's contention here. In all of them the Court held, as a primary proposition, that the defendants had not been guilty of any wrongful act, that is, *that they had not so marked or dressed up their goods as to be chargeable with unfair competition.*

Having found that the name or device used by the defendants did not constitute an infringement of the trade rights of the complainants, the Court in these cases properly held that no independent unauthorized fraud of dealers and middlemen in substituting the goods of the defendant's for the complainants' could render the defendants liable. If the Remington-Sholes Company had marked its machines *with an entirely different name*, as for example in Coats *v.* Merrick, (Ibid), where the de-

fendants marked its goods with the name "Merrick," as distinguished from "Coats," then the defendants' contention would be of force herein.

In the case at bar, the defendants have appropriated the complainants' trade name "Remington" and placed it upon their machines and used it in their catalogues and advertisements and stated therein that their machine was the only typewriter made by a Remington and that the Remington-Sholes Company was the second generation of typewriter builders bearing that great name. Hence, this case in its facts and circumstances is clearly distinguishable from the cases above cited.

For each and all of the above reasons, it is therefore submitted that the ruling of the Court below admitting this evidence was right.

**(D) No error was committed in failing to tax the costs of the alleged objectionable evidence against the complainant.**

A point was made by defendant that the Court below erred in failing to *tax the costs* of this alleged immaterial evidence on the complainant.

Aside from any question of the competency thereof, it is to be urged in answer that no such relief was asked for in the notice of motion.

The motion was simply "to suppress" the evidence. No motion was made in any Court to tax the costs of this evidence against complainant herein.

No such request was made in the defendant's brief filed in the Circuit Court and no such request was made in the Circuit Court of Appeals.

It follows from that which has been said above that the Circuit Court properly overruled defendant's motion to suppress said evidence.

EDMUND WETMORE,
HENRY D. DONNELLY,
WILLIAM W. DODGE,
PAUL ARMITAGE,
Counsel for Appellee.

# Supreme Court of the United States.

OCTOBER TERM, 1904.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,
*Defendants-Appellants,*

*v.*

WYCKOFF, SEAMANS & BENEDICT,
*Complainant-Appellee.*

*No. 130.*

## SUPPLEMENTAL BRIEF FOR COMPLAINANT-APPELLEE.

We avail ourselves of the permission granted at the argument to state shortly our position and what we conceive are the principal errors in the defendant's argument.

The complainants' position, which was endorsed by the courts below, is that in a case like this where a corporation begins a new business and selects a name under which to introduce itself and its products to the public the case is one where a person not of the name has adopted it as his business name and marked his goods with it, and is to be so treated even though one or more of its incorporators, stockholders, or officers may be of that name.

We submit that in this case all the arguments and au-

thorities which relate to the proposition that every man has a right to use his own name in his own business are wholly inapplicable, because it is the corporation-defendant and not any individuals connected with it that is carrying on the business under the name and marking its goods with it, and because before its adoption of the name it had no such name and took over no business or good will to which the name could be regarded as appurtenant.

The authorities in this country and in England are, without exception, perfectly harmonious and all to this effect. The question has been decided time and again by courts of last resort and there is not a single decision to be found in the books wherein it has been held that a corporation derives any right whatever to use a particular name from the mere fact that one of its incorporators and stockholders bears that name.

Say the Court of Appeals of New York:

> "The defendant derives no additional immunity from the fact that the name of Higgins in its corporate name was that of one or more of its incorporators or that Charles S. Higgins or anyone of that name might engage in the soap business under the family name, or that Charles S. Higgins and the other incorporators of the same name had consented to its use."
>
> Charles S. Higgins Co. *v.* Higgins Soap Co.,144 N. Y. 462.

Say the English Court of Appeal, referring to a similar situation:

> "The Valentine Extract Company, Limited, is not the name of any man."
>
> Valentine Meat Juice Co. *v.* Valentine Extract Co., Ltd., 17 R. P. C. 673.
>
> 83 L. Tms. 271.

Say the Court of Appeals for the First Circuit, Mr. Justice Gray sitting as a member of the court:

> "The authorities * * * touching the ordinary inherent right of every person to the honest use of his own surname" have not "been extended to corporations which have appropriated surnames."
>
> Le Page Co. *v.* Russia Cement Co., 51 Fed. 941–943.

Say the Court of Appeals for the Sixth Circuit, in a case to which the defendant directed particular attention at the argument:

> "The cases which enjoin corporations from the use of a particular name, even though the name be that of some one connected with it, are not uncommon. * * * But such cases are distinguishable. A corporate name is an artificial name, and is selected with an object, and may be changed, and a new one taken. The adoption of a particular name as a part of a corporation name, as in the Garrett case, may carry with it patent evidence of an intent to mislead and trade unfairly."
>
> Royal Baking Powder Co. *v.* Royal, 122 Fed. 337–345.

In a very carefully-considered opinion, where most of the authorities are reviewed, the rule was recently stated as follows:

> "Where the second comer is a corporation that has adopted such name as part of its corporate name, the case has been treated as one where a person not of that name has adopted it as his business name, and marked his goods with it, even though some or all of its incorporators, stockholders, or officers may be of that name. For in such case it is the corporation, and not the individuals connected with it, that is doing business in that name, and marking its

goods with it, and, before the adoption of the name by it, it had no such name."

Bissell Chilled Plow Works *v.* T. M. Bissell Plow Company, 121 Fed. 357–367.

Many other cases to the same effect are collected in our principal brief (p. 87 *et seq.*). There is, so far as we know, not a single authority to the contrary. The cases cited by the defendant are, none of them, cases where a corporation has attempted to take the name of an individual similar to a name long used by a rival in the same business without taking with it some business or good-will which the name had by usage come to indicate to the public. (See complainant's principal brief, p. 286 *et seq.*)

And the same distinction between the name of an individual and the name of a corporation is expressed in the decrees which have been formulated in all such cases.

For example, in the Valentine case, which perhaps, more than any other to be found in the books resembles the case at bar, the decree prohibited the corporation-defendant, Valentine Extract Company,

> "from carrying on business * * * under any name or title of which the name 'Valentine' or 'Valentine's' forms part, and from selling * * * any such preparation * * * under any name or description of which the name 'Valentine' or 'Valentine's' or 'Valtine' forms part."

The individual defendant, Charles Richard Valentine, on the other hand, was restrained from carrying on business or selling the article "without clearly distinguishing" his business or article from that of the plaintiffs.

Valentine Meat Juice Co. *v.* Valentine Extract Co., 17 R. P. C. 688.

In the case of an individual using his own name in his own business, the court may be powerless wholly to cor-

rect possible confusion, because perhaps it cannot take from the defendant his inherent right to use his name, and some injury may, therefore, be *damnum absque injuria*. But in the case of a corporation, there is no conceivable reason why any injury should not be wholly prevented, because the corporation has no inherent right to the name and the courts have, accordingly, not hesitated to prevent any possible confusion.

The decree in the present case is not more broad than that issued in the Valentine case, and is less broad than that issued in other cases where a defendant is using the name which embodies the good will of another *without right* (*e. g.*, Pinet *v.* Pinet, 15 R. P. C. 65). It is, in fact, as narrow as the form of decree which has been entered in cases where the defendant has used a particular name under a claim of *right of which he could not be wholly deprived;* and even in such cases this form of decree has received the approval of the courts of last resort in this country and England.

The prohibition here is not an absolute prohibition, preventing any use of the word "Remington." It prohibits its use only "as the *name* or part of the *name* of any typewriting machine" made by the defendant and forbids selling typewriting machines made by the defendant "under the *name* of or as Remington-Sholes or of any *designation* of which the word Remington shall constitute part" (R., pp. 1503–04).

It will be observed that the decree does not prohibit the defendant from stating that Mr. Franklin Remington is a stockholder or is interested in the machine, or any other fact. It simply prohibits the use of "Remington" or its equivalent as a name.

If the injunction had prohibited the use of the word absolutely, and not simply as a name or designation, there

might be some foundation for the comments of our friends on the other side. It prohibits only what the facts show it is impossible for the defendant to do without causing mistake, confusion, and fraudulent substitution. It is the use of the word "Remington" as a name or part of the name of another business and another machine which necessarily results in defrauding the complainant and deceiving the public. No addition or qualification could, as a matter of fact, correct the wrong, and the courts below properly followed that form which experience has shown is alone sufficient to give effect to the settled rule of law.

The same form of decree was issued and commented upon by the Court of Appeals for the Eighth Circuit, in Shaver *v.* Heller, 108 Fed. 821, 824–5; by the House of Lords in Montgomery *v.* Thompson, A. C. (1891) 217, and in many other cases. (See principal brief, p. 278.)

The decree in the case of Royal Baking Powder Co. *v.* Royal, to which the defendant directed attention at the argument, was broader and more sweeping than the decree in this case, and that was a case where the defendant had a right to use his name of which he could not be deprived. The defendant was not using his name in that case directly as a name or part of the name of the product, which was called "Maxim Baking Powder." The Court of Appeals did more than prevent his using it as a name. It prescribed that if he used it at all it must be "in the least conspicuous manner possible consistent with the right" to use it. (122 Fed. 337–348.)

The suggestion that the decree in the case of Singer Manufacturing Co. *v.* June (163 U. S. 202) is instructive, is, we venture to think, obviously a misconception. In that case, by reason of the existence of patents which covered the machine, the name "Singer" had come to indicate to the public the particular *kind* of machine covered

by the patents. It followed that everyone had the right to use the name "Singer" "to its fullest extent;" in other words, as the *name* of that *kind* of machine, because the name "Singer" indicated not the origin but the kind of machine. And from this, in turn, it followed that accompanied by a statement that a company of another distinctive name was the maker, the name "Singer" would convey no misrepresentation.

In the present instance the name "Remington" does not and never has indicated a kind of machine, but only origin from the business now owned by the complainant. "Singer," in other words, meant "this is a machine made in accordance with certain patents." "Remington" means "this machine embodies the good workmanship which prevails only in the business now owned by the complainant." No one could be deprived of the right to use the first name or the equivalent expression. No one (except, perhaps, a person born to the name) but the complainant can truthfully use the second name, or its equivalent expression.

In brief, the decree in this case is not more broad than the form of decree which is sanctioned in relevant cases where the defendant has used a word which it had a right to use as a *word*, but because as a name it had come to be a "trade denomination" could not truthfully use as a *name*. It is less broad than the form of injunction usually issued in cases where the defendant has no *right* to use the word in any form, and if anything, less broad than that to which the complainant was entitled.

The decree and result being in exact accordance with all the relevant authorities, it remains to consider the more important errors in the argument by which it is sought to be overthrown. We respectfully submit that this argument involves an important error of law and several fatal fallacies.

What we venture to conceive is the error in law involved in the argument, is that it confuses the rules applicable to cases wherein a man uses his own name in his own business and where some use is consequently matter of necessity and the injury may be *damnum absque injuria*, with cases where a corporation beginning a new business, as this constructive defendant was when the name was first used, selects a name embodying the good-will of an established rival in the same industry where any use of the name is pure matter of choice and any confusion (which is necessarily harmful to the rival, the public and the new-comer, if it has any desire to build up a reputation and good-will of its own) is wholly unnecessary and therefore inequitable.

The case is not one where a corporation takes over from an individual an established business and good-will and the name which identifies to the public that business. It is a case where a corporation is formed to inaugurate a new business and selects for it a name under which to begin to introduce itself and the origin of its goods to the public.

It may be important to observe that the argument on behalf of the defendant obscures the fact that not until the corporation bearing the name Remington-Sholes was organized was any business transacted or any machine sold or offered for sale. The corporation took over no business or good-will whatever. It was, in so far as the manufacture and sale of typewiters for the public were concerned, an entirely new enterprise, and it had the entire universe from which to select a name.

Mr. Remington made an investment. He made or sold no typewriter. The distinction is important because while a surname which has ceased to indicate to the public a man's personality and come to indicate his business may be transferred with that business, a surname which indicates to the public only a man's personality is in the

nature of things incapable of being transferred to another so that the transferee will derive any rights from the transfer.

This is the decision of this Court in Manhattan Medicine Company *v.* Wood (108 U. S. 218) wherein it was held that the use by a transferee of the name of its transferor which still indicated his personality and had not been so widely used as to indicate to the public his business (as distinguished from his personality) was a fraud or misrepresentation which conferred no rights which a court would recognize.

It is suggested that Mr. Remington's name was "property" and that the corporation desired to use this property. There are various kinds of property and what is true of one kind is not necessarily true of another. Of all species of property that which most closely resembles a man's surname is a technical trade-mark. Both are symbols of individuality and identification which belong and are appurtenant to the thing which they identify. A technical trade-mark cannot be divorced from or transferred apart from the good-will of the business in which it has acquired its meaning, and a man's name which has identified only his personality cannot be divorced therefrom and used to identify another. Such transfers simply amount to permission to practice misrepresentation or false personation and have no foundation in reason or law.

Rendle *v.* Rendle & Co., 63 L. T. N. S. 94.

Sawyer *v.* Kellogg, 7 Fed. 720.

Morrall *v.* Hessin, 19 R. P. C. 557; 20 R. P. C. 429.

The question in this case is not whether Mr. Remington had invested money but whether before the corporation was formed he had built up such a business that to the public his name had ceased to indicate his personality and come to indicate his business. Upon that question there

is no room for difference of opinion. Mr. Remington had no business whatever. He had made or sold no typewriter. The public had no possible intimation of any "Remington" business except that of the complainant. He could not, therefore, confer on another any right whatever to use the name, and the rights of the constructive defendant are precisely the same as if no one named Remington were connected with it.

In this case, therefore, "we have no occasion to deal with the long line of authorities, touching the ordinary inherent right of every person to the honest use of his own surname." These have not "been extended to corporations which have appropriated surnames for use in connection with proprietary articles; while they uphold with a firm hand the fundamental doctrines of honesty and good faith as applied to this branch of the law, and have been vigilant in searching out and punishing evasions and artifices, even in connection with this primitive right" (Le Page *v.* Russia Co., 51 Fed. 941, 943–4).

Valentine Meat Juice Co. *v.* Valentine Extract Co., 17 R. P. C. 693;

Charles S. Higgins Co. *v.* Higgins Soap Co., 144 N. Y. 462;

DeLong *v.* DeLong Hook & Eye Co., 32 N. Y. Supp. 203;

Garrett *v.* T. H. Garrett & Co., 78 Fed. 472;

Rogers Mfg. Co., *v.* Rogers & Spurr Mfg. Co. 11 Fed. 495;

William Rogers Mfg. Co. *v.* R. W. Rogers Co., 66 Fed. 56; 70 Fed. 1017;

International Silver Co. *v.* Rogers Co., 110 Fed. 955;

Bissell Chilled Plow Works *v.* T. M. Bissell Plow Co., 121 Fed. 357, and cases cited;

Tussaud *v.* Tussaud 44 Ch. Div. 678.

There is not one authority to the contrary.

The reasons for the choice by the defendant of the name "Remington" were obviously those set forth in the opinion of the court below. (R., p. 1528.) Even the reason suggested in the dissenting opinion that the name was selected for use in connection with typewriters in order to suggest not "Remington typewriters" but "Remington Fire Arms," amounts to no more than a suggestion that the defendant may have desired to trade upon the goodwill of the Remington Arms Company as well as upon that of the complainant. There is certainly nothing in the record to support this suggestion or to contradict the obvious fact that the word "Remington" was given to the new typewriter venture in order to take advantage of the reputation which typewriters everywhere known as "Remington" had gained. Indeed, the suggestion simply amounts to a confession that the petitioner adopted the name to "steal away" some good-will and property which did not belong to it. We submit that obviously it was our good-will and property that it sought to "steal away," but it is not perhaps very important in so far as preventing the continuance of the wrong is concerned, whether the Rem ington Arms Company may also suffer.

Clark Thread Co. *v.* Armitage, 45 U. S. App. 62, and cases cited.

Besides setting up no legal defense, the argument of the defendant, we venture to think, involves many fallacies which have often been exposed, to which we beg to be permitted to direct attention.

Perhaps all these fallacies may be summed up by saying that the argument is fallacious because it omits from consideration the controlling fact that the designation "Remington" in connection with typewriters at the time the defendant entered the field had acquired a secondary meaning, and was so used and understood the world over, and

seeks to discover whether the defendant's conduct is reasonable by considering its actions as isolated facts divorced from this all-important circumstance.

During the defendant's argument in the case of Reddaway *v.* Banham (A. C. 1896, 214), the Lord Chancellor pointed out the fallacy underlying such an argument in the following words:

> "I do not see any difficulty at all. *There is no inherent right to say anything at all times and to all people under all circumstances.* What you must look at is the people to whom it is addressed and the effect it is producing, and if the effect is to make them believe that they are buying something which they are not buying, then that is cheating." (13 R. P. C. 218.)

When the defendant entered the field the designation "Remington" in connection with typewriters had acquired a perfectly definite and secondary meaning as giving notice of the skill, knowledge and probity which prevail in the business now owned by the complainant. There was nothing "more or less" about it. The name had become, in the words of Lord Westbury in the "Glenfield Starch" case, "a trade denomination" (5 H. L. 510), indicating in fact the origin and, therefore, the excellence of the article, to the exclusion of everything else.

This is the finding of both the courts below; and there is no doubt that the finding is abundantly supported by all the evidence in the record, which admits of no other possible conclusion. The testimony on behalf of the complainant is all to the same effect, and the universal understanding of the term "Remington" is made plain by the literature of the defendant. (Pp. 223–229.)

That the name "Remington" in connection with typewriters would suggest or tell nothing to the public concerning Mr. Franklin Remington is, in substance, admitted

by the defendant's counsel, who stated in their brief below that at the time the constructive defendant entered the field "the name Remington was admittedly a by-word for good workmanship the world over."

The designation "Remington" in connection with typewriters has never given notice of the judgment, skill and probity of any *individual*, but always of that prevailing in a business and establishment owned by a corporation.

When used by the corporation E. Remington & Sons, the designation "Remington" gave notice of the painstaking industry embodied in the typewriters produced by the organization and in the business owned, not by any individual but by the corporation. The value of the name depended not on individual effort but on the combined result of all which many individuals had created. And every particle of that value was the property not of any individual but of the corporation.

LePage *v.* Russia Cement Co., 51 Fed. 941;
Clark Thread Co. *v.* Armitage, 74 Fed. 936:
Walter Baker & Co. *v.* Saunders, 80 Fed. 889;
Kidd *v.* Johnson, 100 U. S. 617–620;
Richmond *v.* Richmond Nervine Co., 159 U. S. 293;
Feder *v.* Benkert, 70 Fed. 613.

And when the complainant acquired the business and establishment in which the typewriters were produced, the designation "Remington" continued to give notice that the typewriters in connection with which it was used embodied the skill, knowledge and probity peculiar to that business and establishment, and as the business expanded the designation "Remington" in connection with typewriters came to have everywhere and to everyone, here and abroad, this definite, secondary meaning of origin and, therefore, excellence, to the exclusion of everything else.

Any consideration of the situation existing at the time when the constructive defendant entered the market, therefore, begins with the controlling fact that at that time the designation "Remington" as a matter of fact effectually guaranteed that the typewriter in connection with which it was used embodied the particular skill, knowledge and probity which prevail only in the establishment and business owned by the complainant.

Here, then, we respectfully submit, is one fatal fallacy in the defendant's argument. It omits the fact that by using the designation "Remington" in connection with its machine the constructive defendant was not, as a matter of fact, informing the public concerning any of the incidents which the argument assumes might interest the public, but (because persons understand by "Remington" in connection with a typewriter that it originated in the business owned by the complainant) it is representing that its goods are made by the complainant.

In Elgin National Watch Co. *v.* Illinois Watch Co., this court, quoting the words of Lord Herschell in Reddaway *v.* Banham (A. C. 1896, 199) said:

> "I think the fallacy lies in overlooking the fact that a word may acquire in a trade a secondary signification differing from its primary one, and that if it is used to persons in the trade who will understand it, and be known and intended to understand it in its secondary sense, it will none the less be a falsehood that in its primary sense it may be true." (179 U. S. 665–676.)

In the present instance we are not complaining of a statement in a catalogue or elsewhere to the effect that a machine of an honest name, marketed by a company of an honest name, is sold with the approval or embodies in part an investment of a son of a stockholder and officer of a

corporation which formerly owned our business. If the constructive defendant, calling itself The Fay-Sholes Company and its typewriter the Fay-Sholes typewriter (as it now does) chooses honestly to make such a statement, it may do so without the slightest embarrassment from the injunction which has been issued or an injunction which restrains the misleading abbreviation as well as the misleading name it abbreviates. It is not the use of the name "Remington" in a statement concerning the life and works of Franklin Remington and his connection with the defendant's business of which we complain and no such use is affected by the injunction.

If it is suggested that the use of the designation "Remington" as used by the constructive defendant is equivalent to such a statement, we respectfully answer that the record conclusively shows, and as pointed out by the court below the defendant's counsel in effect admit that the use of the word "Remington" in connection with a typewriter does not and cannot convey to the public any information or impression whatever concerning Mr. Franklin Remington, but only the representation that the "good workmanship" which prevails in the business now owned by the complainant for which the "name Remington was admittedly a by-word * * * the world over," is embodied in the machine.

The defendant's argument assumes that the exact status of affairs, the existence of Mr. Franklin Remington, his relationship to an officer and stockholder of the old Remington corporation, his connection as stockholder with the constructive defendant, etc., is known to the public, and that in the name "Remington" when used in connection with a typewriter the public is reminded of all this. On such an assumption there would be no marks of origin and no rules of law relating thereto. The fallacy here lies in

overlooking the fundamental consideration that, in words used in the House of Lords in a very similar case:

> "When you are dealing with the question of people being deceived, that negatives the idea of their having certain knowledge or else they could not be deceived." (North Cheshire Co. *v.* Brewing Co., A. C. 1899, 83.)

Many (and so, constructively, all) purchasers of typewriters, actual or prospective, here and abroad, remember or know nothing whatever concerning the machine which they seek except the guarantee implied in the name "Remington."

This, indeed, is the purpose and result of the use of every trade designation or mark of origin and the foundation of every good-will connected with the sale of widely distributed commodities. When the defendant entered the field, the complainant, by years of painstaking care in manufacture, and enormous expenditure, had put the concept "Remington" into men's minds, and thus created a good-will and favor connected with the business of making and selling typewriters. The public have been educated to recognize the designation by advertisements, by word of mouth, and in many other ways. Necessarily many knew nothing concerning the typewriters except that they had seen or heard and remembered the name and knew that it stood for the care and honesty of a particular manufacture. From this there had resulted a probability which included the whole world that persons desiring a typewriter would look for and be attracted by the name "Remington," and discriminate in favor of typewriters with which that name might be connected. This "probability * * * connected with the name" was the complainant's good-will and property. (Menendez *v.* Holt, 128 U. S. 514.)

The name "Remington" being what the customers and prospective customers looked for and all that they remembered or cared about, "the Remington-Sholes Typewriter Company widely advertised its machines as the Remington-Sholes typewriter" (petitioner's brief, p. 8), "which became known throughout this country and abroad as the Remington-Sholes." (*Ib.* 49.)

The necessary result has been and would (except for the intervention of the court) increasingly be mistake, confusion and fraudulent substitution. And this is sufficiently demonstrated and suggested in the record.

Weingart and Stallwood, seeing the name "Remington," understood it exactly as the constructive defendant understood it when it issued its pamphlet speaking of "Remington," "Remington machine," "Remington bar," etc. Concerning these witnesses, the petitioner's brief says, "they may have been mistaken" (145). Weingart certainly purchased one of the defendant's machines, believing he was purchasing a machine of the complainant's manufacture. The comments of the defendant's counsel on this evidence suggests the remarks of an English judge in a somewhat similar case:

> "The question, therefore, which I have to consider is whether these two * * * are sufficiently similar to deceive. * * * That is the question which I have to decide. There is no evidence of any deception; and, naturally, in this case, as in all others that ever I heard of, stress has been laid upon that. I think, sometimes, in urging that point, counsel forget that *if one case of actual deception is proved there is no more to be said on either side. The case is at an end.* Argument really only takes place where there is no proved case of actual deception." (13 R. P. C., Liebig Company *v.* Chemists' Company, 635–644.)

It is suggested that these purchasers did not exercise "reasonable care" (petitioner's brief, p. 18), the sugges-

tion being that because these purchasers were guilty of something in the nature of contributory negligence, the fact that they actually mistook the defendant's machine for a "Remington" and the manufacture of the complainant is unimportant. But it is to be observed that there is here no question of contributory negligence or "reasonable care" as the words are used in that connection. The care which purchasers ordinarily exercise does not involve a consideration of what they *should* do but what, as a matter of fact, they *do;* and there could be no better proof of this than the testimony showing what they actually did. The petitioner relies upon the case of Rogers *v.* Simpson (54 Conn. 568) as stating the rule. But in that case the court points out the fallacy of confusing the ordinary care of the unsuspecting customer with the reasonable care required from a plaintiff, saying:

> "The fact that careful buyers * * * are not deceived does not materially affect the question. It only shows that the injury is less—not that there is no injury. Another class of purchasers to whom large quantities are sold are deceived. Such purchasers perhaps will have no reason to complain as they, if they are injured by the deception, must attribute the injury to their own want of diligence. But the petitioners stand on entirely different ground. No amount of diligence on their part will guard against the injury. An injunction is their only adequate remedy, and to that we think they are entitled."

Prudent and thrifty people and those knowing and remembering distinctly all the details concerning the article they seek and its manufacturer take care of themselves. It is the ordinary lack of precise information or recollection of the ordinary unsuspecting customer which it is important to consider in the endeavor to check unfair competi-

tion and protect and encourage enterprise and excellence in the production of distributed commodities.

Wotherspoon *v.* Currie, 5 H. L. 510;
Celluloid Co. *v.* Cellonite Co., 32 Fed. 94;
Singer Co. *v.* Loog, 8 App. Cases, 18;
Powell *v.* Birmingham, &c., Co., L. R. Ch. (1896) 68;
McLean *v.* Fleming, 96 U. S. 242;
Amoskeag Co. *v.* Spear, 2 Sand., S. C., 599;
N. K. Fairbank Co. *v.* Luckel, Cake, &c., Co., 102 Fed. 327;
Saxlehner *v.* Eisner, 179 U. S. 19.

In the present instance ordinary purchasers using the ordinary care which, as a matter of fact, purchasers do exercise understood the designation "Remington" as used by the defendant just as the defendant in its instructions to salesmen shows it understood it, to wit, as indicating origin from the complainant; and their custom was by this false representation diverted.

In brief, the representation with which the Court is called on to deal is not in fact a representation that Mr. Franklin Remington or his brother is represented in the new company, and the whole of the defendant's argument which is addressed to justifying such a representation is, as we respectfully submit, without applicability or value in the present case. The representation which is in fact made is a misrepresentation as to the origin of the new article, the continuance of which admits of no possible justification.

It is to no purpose to argue that because in the abstract a man may join others in incorporating a company and because the public may be interested in genealogy and because there is no room in the world for sentiment as well as honesty, or because of other things which the defendant's argument suggests, it follows that this defendant may in

fact say to such purchasers of its machines: "This typewriter is the latest product of that 'good workmanship' for which 'the name Remington is a by-word * * * the world over,'" and which is bestowed on typewriters only in the business and establishment owned by the complainant and thus by misrepresentation or fraud impose upon the public and cheat the complainant out of the results of years of painstaking industry and enormous expenditures. And because the word "Remington" in connection with typewriters had in fact acquired a secondary meaning and was so used and understood, it is such a representation with such a result that the defendant in fact makes when it uses the designation.

This is the misrepresentation or fraud of which we complain—the misrepresentation of the origin of the machine by the use of the name which in fact indicates that it is a product of our own business and symbolizes our reputation and good-will. The appearance or construction of the machine of which the ordinary purchaser is not aware and which is not in any way affected by the decree—is not material.

It is impossible for two typewriters to be as different as were the articles involved in the Valentine case, to which attention has been directed. And the differences could not have been more urgently brought to the attention of the Court. Referring to this point, Lord Justice Collins said:

> "The get-up has nothing whatever to do with this case. It may be dismissed altogether from the discussion because the representation is not as to the form in which the thing is sold."

Said Lord Justice Rigby:

> "They wanted * * * not to take so much advantage of the resemblance of the product but, on the

suggested resemblance, of the origin. And I think it is unnecessary to go farther than that." (17 R. P. C. 686.)

In the present instance the representation is that the new machine is a "Remington"—a machine from the origin that name is understood to indicate embodying the excellence that name is understood to guarantee. What kind or variety of machine—whether improved or having some modifications made by one Sholes or what not—is immaterial.*

*Among other cases which emphasize the fact that where the symbol which embodies a good-will consists of a name the appearance or "get-up" of the article is of practically no value in preventing the evil which the law aims to correct are:

Wotherspoon *v.* Currie, L. R., 5 H. L., 510;
Read *v.* Richardson, 45 L. T., N. S., 54;
N. K. Fairbank Co. *v.* Luckel, &c., Co., 88 Fed. 695; 102 Fed. 331;
Cochran *v.* MacNish, A. C., 1896, 225;
Johnson & Johnson *v.* Bauer & Black, 79 Fed 954; 82 Fed. 662;
Saxlehner *v.* Apollinaris Co., 13 T. L. R. 258;
Hiers *v.* Abraham, 82 N. Y. 521;
Shaver *v.* Heller & Merz Co., 108 Fed. 821;
Thompson *v.* Montgomery, 41 Ch. D. 35; 138 U. S. 550;
Selchow *v.* Baker, 93 N. Y. 59;
Morse *v.* Worrell, 10 Phil. 168;
Reddaway *v.* Banham, H. L. App. C. (1896), 214;
Apollinaris Co. *v.* Norrish, 33 L. T., N. S., 242;
N. K. Fairbank Co. *v.* Central Lard Co., 64 Fed. 134;
Seixo *v.* Provezende, L. R., 1 Ch. 192;
Congress, &c., Co. *v.* High Rock Congress Spring Co., 54 N. Y. 291;
Anheuser-Busch Brewing Association *v.* Piza, 24 Fed. 149;
Colgate *v.* Adams, 88 Fed. 899;
Clark Thread Co. *v.* Armitage, 74 Fed. 936;
Higgins Soap Co. *v.* C. S. Higgins & Co., 144 N. Y. 462;
Royal Baking Powder Co. *v.* Raymond, 85 Fed. 231;
Enoch Morgan's Sons Co. *v.* Wendover, 43 *Ib.* 420;
Metzler *v.* Wood, 8 Ch. D. 606;
City of Carlsbad *v.* Kutnow, 71 Fed. 168;
Fuller *v.* Huff, 105 Fed. 141.

Among other cases which emphasize the fact that a qualifying word by way of prefix or suffix to a designation which embodies a good-will should be disregarded are those involving:

And there is no doubt whatever that as a matter of fact the use of the designation "Remington" has resulted in misconception as to the origin of the respondent's machines. The record contains various instances showing confusion, which have already been examined in our principal brief. For present purposes it is sufficient to direct attention to the fact that the defendant itself admits in its literature that "the question is often asked, what connection has the Remington–Sholes Company with the Remington Standard Typewriter?" There could hardly be a plainer confession that persons have understood the representation conveyed by the name "Remington" as (having regard to the secondary meaning of the word) it would

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"Queen" and "Queen Quality," 105 Fed. 377;
"Congress" and "High Rock Congress," 54 N. Y. 291;
"Carlsbad" and "Kutnow's Improved Effervescing Carlsbad," 71 Fed. 168;
"Home" and "Home Delight," 59 Fed. 284;
"Apollinaris" and "London Apollinaris," 33 L. T. R. 242;
"Glenfield" and "Royal Palace Glenfield," 5 H. L. 508;
"Budweiser" and "Milwaukee Budweiser," 87 Fed. 864;
'Sunlight" and "American Sunlight," 88 Fed. 485;
"Royal" and Royal London," 76 Fed. 465;
"Health Food" and "Sanitarium Health Food," 104 Fed. 141;
"Comfort" and Home Comfort," 127 Fed. 962;
"Sanitas" and "Condi-Sanitas," 56 L. T., N. S., 621 (4 R. P. C. 195);
"Portland" and "Famous Portland," 52 N. J. Eq. 380 (28 Atl. Rep. 788);
"Roy Watch Case Co." and "Camm-Roy Watch Case Co., 59 N. Y. Supplement, 979;
"Star" and "Lone Star," 51 Fed. 832;
"Cashmere" and "Violets of Cashmere," 88 Fed. 899;
'Hohner" and "Improved Hohner," 52 Fed. 871;
'Pride" and "Pride of Syracuse," 82 N. Y. 519;
"German Household Dyes" and "Excellent German Household Dye" 94 Wis. 583 (69 N. W. Rep. 569);
"Guinea Coal Co." and Pall Mall Guinea Coal Co.," 5 Ch. 155;
"Le Page's Liquid Glue" and "Le Page's Improved Liquid Glue," 147 Mass. 206;
'The American Grocer" and "The Grocer," 25 Hun, N. Y. 398.

naturally be understood and as, no doubt, it was intended to be understood, to wit, as indicating that the new machine was a product of the complainant's business.

But the defendant argues that it always took pains to correct such erroneous impressions. The situation here again is the same as in the Valentine case, where Lord Alverstone said:

> "That is answered by the defendants by saying, whenever that came to our knowledge we did our best to put it right. We said, 'We have nothing to do with the Valentine Meat Juice Company.' The answer is that, of course they did so; and if any letter of the kind has been found in which they had stated that they were connected with the Valentine Meat Juice Company, the fraud of course would have been conclusively established; but we have not got to consider what was the explanation given to the persons who asked for an explanation and got it. * * * We do not know, of course, how many other people who did not write for an explanation would have remained under the same inpression" (17 R. P. C. 682).

Lord Justice Rigby pointed out that it was incumbent upon the new-comer in the market to be

> "careful, not to counteract the necessary results of what they did, but not to do that which necessarily led them to a result of that kind" (p. 686).

The necessary effect of the use which the defendant makes of the designation "Remington" is very clearly shown by the testimony concerning the acts of the middlemen who market its machines, particularly abroad. The misleading and hurtful nature of the representations made by these middle-men is apparent on the face of the advertisements they have issued, and it was admitted by defendant's counsel in argument that they were fraudulent.

That such advertisements and the dealings which they suggest are an obvious and necessary consequence of the defendant's use of the name "Remington" is obvious.

The constructive defendant urges that for these acts it is in no way responsible.

What we understand to be the rule is thus stated by the Supreme Court of Massachusetts:

> "It is found that the defendant did not intend to deceive the public by passing off their goods for the plaintiff's, but this must be taken pretty strictly. They knew that they were putting the power to do so in the retail dealers' hands. It hardly can be doubted that they contemplated that the wholesale dealer at whose request they put up their awls in this form, with full knowledge of the plaintiff's prior use, would or might try to deceive the public, and whether they did or not is immaterial" (N. E. Awl, &c., Co., *v.* Marlborough, &c., Co., 168 Mass. 154).

In the Yorkshire Relish case, it is said:

> "It is argued that the defendant has nothing to do with the deception of the public. The answer is obvious. Every person who, intending to buy a bottle of the plaintiff's sauce, gets instead a bottle of the defendant's, is a customer taken from the plaintiff by this deceit. And if this is extensively done the damage to the plaintiff's trade would be serious" (Powell *v.* Birmingham Vinegar Co., L. R. 1896, Ch. D. 88).

It was said in the House of Lords:

> "It has been long ago pointed out in decided cases that it is not upon a *mala mens* towards the first purchaser that the decision of these cases rests. The first purchaser buys the goods cheaper for the very purpose of being able to sell them as 'Glenfield' starch, the means of doing so being put in his hands by his being furnished with goods with this label—I will not say in order that he may deceive, but it is a

> necessary consequence that he is enabled to deceive others by this means. * * * That is just the very case of all others in which the Court has constantly interfered to prevent that which is a distinct fraud" (Wotherspoon *v.* Currie, 5 H. L., 510).

There are a few expressions in opinions relating to cases wherein the "first purchaser" has fraudulently substituted without any aid from the thing put into his hands by the defendant to the effect that the defendant is not responsible for such frauds. And these expressions have been carefully collected in the petitioner's brief. But there is, we submit, no doubt that the reasoning which takes account of the facts as they actually exist and which corrects instead of encouraging fraud is endorsed and applied in the great majority of well-considered cases.

Reddaway *v.* Banham, A. C. 1896, 200;
LePage *v.* Russia Cement Co., 51 Fed. 941;
N. K. Fairbank Co. *v.* Bell Co., 45 U. S. App. 205;
Garrett *v.* T. H. Garrett, 98 Fed. 473;
Pillsbury *v.* Pillsbury, &c., Co., 64 Fed. 841;
N. K. Fairbank Co. *v.* Luckel, Cake, &c., Co., 102 Fed. 331.
Von Mumm *v.* Frash, 56 Fed. 830;
Hostetter *v.* Sommers, 84 Fed. 303;
Saxlehner *v.* Apollinaris Co., 13 T. L. R. 258;
Ewing *v.* Johnson, 18 Ch. D. 612;
Lever *v.* Goodwin, 36 C. H. D. 1;
Little *v.* Kellam, 100 Fed. 353;
Hostetter *v.* Becker, 73 Fed. 297;
Collinsplatt *v.* Finlayson, 88 Fed. 693;
National Biscuit Co. *v.* Baker, 95 Fed. 135.

The fact that the machines are sold to middlemen with consciences of varying elasticity throughout the world and pass from hand to hand unaccompanied by the many facts

upon which the defendant relies is, in short, an important circumstance to be considered in judging the character of the representation which the defendant is making. And the acts of these distributors demonstrate the accuracy of the conclusion which necessarily followed from the fact that the name "Remington" had acquired a secondary meaning, that by the use of the name the goods of the defendant are in fact represented as the goods of somebody else.

The Courts below, in substance, simply found this fact and simply applied the rule endorsed by this Court and the House of Lords, that "No one has a right to represent his goods as the goods of somebody else."

And in applying this the Courts below simply recognized that any use of "Remington" as a name or part of the name of defendant or its product would amount to such a representation and that the defendant had no right (as a man using his own name in his own business might have) which the decree would impair, and following the unanimous voice of authority under the common law issued an injunction in the form which has received the approval of every court here and in England before which such a case has come.

See *e. g.* Valentine *v.* Valentine, 17 R. P. C. 673, 688, and cases cited *supra*, pp. 4–6.

There are several suggestions in the petitioner's brief to the effect that two men may use their names as a partnership name and that, therefore, they may transfer their names without any business or good-will to a corporation. The premise of this argument is one which, like the proposition that a man may use his own name in his own business, is not before the Court. The discussion of it would require quite as much time and space as has been devoted to the case which is before the Court. It is possible that in a certain case the use of two names in a firm-name might give notice that two persons were in fact engaged

in the business, and if so there would be no objection to their use. In another case the use of the names might in fact amount to a false representation, and in such a case the Court would not hesitate to correct it. To borrow the recent words of an English Judge:

> "Croft *v.* Day, in 7 Beavan, page 84, is an illustration of this, where a real Day and a real Martin were restrained from trading under the name of Day & Martin as makers of blacking because it was a manufacture of the well-known firm of Day & Martin, the reason for the injunction being that the name of Day & Martin had been adopted for the purpose of representing and holding out to the public that it was the old firm of Day & Martin" (Morrall *v.* Hessin, 19 R. P. C. 557–564).

There is no occasion to consider what might have been the result had Mr. Franklin Remington and Mr. Sholes formed a partnership. Perhaps had they done so the business might have been regarded as their business. And it is quite impossible to consider the question because the facts as to what they would have done and how they would have used the name, which would be of controlling importance in a case which necessarily depends on questions of fact, have never been developed.

The case at bar is far less difficult of solution because it is a case where a corporation with no name and no business unnecessarily selects the name which in fact embodies another's good-will with the purpose and result of fraudulently stealing away the fruits of that other's labor and cheating the public into taking its unknown product by a representation which in fact conveys a falsehood.

Under the unbroken line of authority which promotes competition by insuring the free and unconfused choice of the public between different makes of the same thing without which legitimate competition is impossible, which

encourages industry and excellence by insuring adequate reward and which, while promoting commercial integrity, prevents imposition on the public, there can, we respectfully submit, be no other solution than that reached by both courts below.

The designation "Rem.-Sho." is simply an abbreviation of the name Remington-Sholes, and it is used by the petitioner as an abbreviation, with periods indicating that it is an abbreviation, in most of its literature.

"Rem." was used as an abbreviation for "Remington" in connection with the complainant's machine for many years before the defendant used it, and it has been used by the defendant in connection with its name so that to everyone it has meant "Remington" just as it did before the petitioner was ever heard of.

It was said by the learned Judge in the Court of first instance:

> "The long name 'Remington-Sholes' got shortened into 'Rem.-Sho.' in writing and speech in conducting the defendant's business, which was well understood to be an abbreviation of the full name. * * * If this short name had been the first one used, there would be much plausibility in this argument, but following 'Remington-Sholes' as it has in use, it has become a well-known, short representation of what the long name it stands for represented and of itself now amounts to a wrongful representation of the source of the defendant's machines."

We respectfully submit that, under such circumstances at least, an abbreviation which is tantamount to a certain word is equivalent in law to the word for which it stands.

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# Supreme Court of the United States.

No. 130.—October Term, 1904.

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| Howe Scale Company of 1886 and Fay-Sholes Company, Petitioners, *vs.* Wyckoff, Seamans and Benedict. | On writ and cross writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit. |

[April 24, 1905.]

This was a bill exhibited, in September, 1898, by Wyckoff, Seamans & Benedict, a corporation of New York, in the Circuit Court of the United States for the District of Vermont, against the Howe Scale Company of 1886, a corporation of Vermont, alleging that complainant had been for many years engaged in the manufacture and sale of typewriting machines known in the markets and to the trade and public, and referred to, identified, offered for sale and sold as the "Remington typewriter," and the "Remington standard typewriter," and that the words "Remington" and "Remington standard" had been registered in the Patent Office under the act of Congress; and charging defendant with fraud and unfair competition in making use of the corporate name "Remington-Sholes Company" and the designations "Remington-Sholes," "Rem-Sho" and "Remington-Sholes Company," in advertising for sale, offering for sale and selling typewriting machines; and praying for an accounting, and for an injunction restraining defendant from advertising or offering for sale or selling typewriting machines manufactured by the "Remington-Sholes Company," bearing the name "Remington" or "Remington-Sholes" or "Rem-Sho" or "Remington-Sholes Company," and from advertising or offering for sale or selling any such machines under said designation, or under any designation of which the name "Remington" was a part.

Defendant was the sales agent of the "Remington-Sholes Company," a corporation of Illinois, and was engaged in selling the typewriting machines called the "Remington-Sholes" or "Rem-Sho" typewriter, which were manufactured by the Illinois corporation at Chicago. The right to use those designations in the way they were used was asserted by the defence, of which the Remington-Sholes Company, and subsequently the Fay-Sholes Company, had charge. The word "Rem-Sho" was alleged to have been registered in the Patent Office as a trade-mark.

The Circuit Court found that defendant's use of the name "Remington" was an unjustifiable invasion of complainant's right to the use of that name, and entered a decree, August 14, 1901, denying an account for gains and profits, without prejudice to the recovery thereof from the Remington-

Sholes Company; and perpetually enjoining the use of the designation "Remington," or "Rem-Sho," as the name or part of the name of any typewriting machine whatsoever manufactured by the "Remington-Sholes Company," or by defendant, or any person or concern, and from selling, offering or advertising for sale in any manner, typewriting machines so manufactured "under the name of or as 'Remington-Sholes' or 'Rem-Sho,' or by any designation of which the word 'Remington' or the abbreviation 'Rem' shall constitute a part." 110 Fed. Rep. 520.

The case was carried by appeal to the Circuit Court of Appeals for the Second Circuit, and was there heard before Circuit Judges Wallace, Lacombe, and Coxe. April 20, 1903, the decree was reversed, without costs, and the cause remanded "with instructions to decree in favor of complainant only as to the name 'Remington.'" Lacombe, J., delivered an opinion in support of that decree, Coxe, J., concurring in the conclusion because "unable to distinguish this cause from *Rogers* v. *Rogers*, 70 Fed. Rep. 1017;" Wallace, J., dissented, holding that the decree of the Circuit Court should be reversed with instructions to dismiss the bill. 122 Fed. Rep. 348.

It appeared that the mandate of the Circuit Court of Appeals was issued April 22, 1903, and that the Circuit Court entered a final decree, June 22, 1903, enjoining the use of the word "Remington," and also that after the original decree of the Circuit Court the Remington-Sholes Company changed its corporate name to that of Fay-Sholes Company, and ceased to make its machines marked with the registered trade-mark "Rem-Sho," and with the inscription "Remington-Sholes Company, Mgrs., Chicago."

It also appeared that in October, 1901, complainant filed its bill in the Circuit Court of the United States for the Northern District of Illinois against the Remington-Sholes Company, for alleged unfair trade competition, and that, after answer filed, an order was entered staying proceedings until the determination of this cause, and providing that if this cause resulted in favor of complainant, that cause should be sent at once to an accounting.

On petition of the Howe Scale Company of 1886, and the Fay-Sholes Company, filed October 22, 1903, and on petition of Wyckoff, Seamans & Benedict, filed December 21, 1903, writ and cross writ of certiorari were granted.

For some years prior to 1860 E. Remington and his three sons were engaged at Ilion, New York, in the manufacture of firearms under the firm name of E. Remington & Sons. The father died in 1863, and in 1865 the sons, who had continued the business, organized the corporation E. Remington & Sons under the laws of New York. About 1866 E. Remington & Sons produced a breech-loading rifle that obtained great vogue throughout the world, and was and is known as "The Remington Rifle." The

"Remington Sewing Machine" and other machines were also manufactured and sold.

In 1873 E. Remington & Sons began the manufacture of a typewriting machine, the most important features of which were invented and patented by Christopher Latham Sholes. It was the pioneer writing machine and called "The Typewriter," and "The Sholes and Glidden Typewriter," and in 1880 the names "Remington" and "Remington Standard" were used instead, as they have since been continuously.

One of complainant's witnesses testified that the typewriter was called "Remington" "for the reason that the name Remington was known the world over, owing to their building guns for foreign governments, building sewing machines, and having one of the largest manufacturing works in the world." In March, 1886, the typewriter branch of the business of E. Remington & Sons was sold to Messrs. Wyckoff, Seamans & Benedict, and there was also transferred the exclusive right to the name "Standard Remington Typewriter," by which name the assignment states the machines were generally known. The assignment contained the express reservation to E. Remington & Sons of the right to engage in the manufacture and sale of typewriters at any time after ten years from its date.

Complainant's typewriting machines have been for years conspicuously marked with the name "Remington" and with a large "Red Seal" trade mark on the paper table and frame; the name and address "Remington Standard Typewriter, manufactured by Wyckoff, Seamans and Benedict, Ilion, N. Y., U. S. A.," on the cross bar in front of the key board; the words and figures "No. 6 Remington Standard Typewriter No. 6" on the front of the base, and the words "This machine is protected by 67 American and foreign patents" on the back. "Remington" and "Remington Standard" and the "Red Seal" have all been registered by complainant as trade marks.

In 1892 Z. G. Sholes, a son of Christopher Latham Sholes, invented a typewriting machine, and early in 1893 the Z. G. Sholes Company was organized under the laws of Wisconsin for its manufacture, but the stock of the company was never issued, and no machine was ever made or sold by it. Later in the year Franklin and Carver Remington, sons of Samuel Remington, formerly president of the E. Remington & Sons corporation, bought a three-fourths interest in Sholes' invention, Sholes retaining one-fourth, and a like interest in the stock of the company, paying from eight to nine thousand dollars. They entered into a written agreement with Sholes, which provided, among other things, that "no further, other or different business of any kind or nature shall be transacted by said corporation or in its behalf, except that the same may be dissolved, in due form of law, as soon as practicable hereafter." Franklin Remington gave his entire time to the promotion of the enterprise, and advanced for expenses from six to seven thousand dollars in addition to the original investment

of eight or nine thousand. The name of the machine was subsequently changed by Sholes from "The Z. G. Sholes" to "The Remington-Sholes." Thereafter the Remingtons and Sholes induced Head and Fay of Chicago to furnish funds to manufacture the Remington-Sholes machine; and a corporation organized in the spring of 1894 for its manufacture was designated the "Remington-Sholes Typewriter Company." This company purchased tools and machinery, and its typewriting machines were placed on the market in December, 1894. In the fall of 1896 the company had become so deeply indebted that it became necessary to take steps to meet its obligations, and at a meeting of the stockholders December 14, 1896, it was resolved that the property and assets be sold at public auction, the buyer to have the privilege of using all or any part of the company's corporate name. Thereupon Fay purchased in his own name, but as trustee for himself and other stockholders, the whole of the assets of the company, together with its good will, the exclusive right to use its trade marks, &c., and for some months carried on the business at the factory formerly occupied by the Remington-Sholes Typewriter Company. The charter of that company was surrendered in April, 1897, and the Remington-Sholes Company was incorporated under the laws of Illinois, and purchased all the assets, good will, trade marks, trade names, &c., theretofore belonging to Fay and the Remington-Sholes Typewriter Company. And the new company continued at the same factory and through the same instrumentalities to manufacture and sell its typewriters. It was stipulated that the common stock of the new company "was divided among the stockholders in keeping with the amounts of cash actually invested by them in the Remington-Sholes Typewriter Company, and that the allotment of said common stock to said Franklin Remington was in keeping with such plan."

The machines made and sold by the Remington-Sholes Typewriter Company were plainly marked with the words "Remington-Sholes, Chicago." After the new company entered on the business the trade mark "Rem-Sho" was adopted, (registered as a trade mark October 19, 1897,) and the machines were also marked on the cross bars with the words "Remington-Sholes Company, Mfrs., Chicago." The Remington-Sholes Typewriter Company widely advertised that its machine "was not the Remington Standard Typewriter," and the catalogues circulated by the Remington-Sholes Company declared: "We state, then, emphatically that this company has no connection whatever with that well-known and excellent machine, the Remington Standard Typewriter, and caution possible customers against confusing the 'Rem-Sho' with that machine or any other."

Mr. Chief Justice FULLER delivered the opinion of the Court:

Referring to the Remington-Sholes Company, it was unanimously held by the Circuit Court of Appeals: "We do not find in this voluminous

record sufficient evidence that defendant has itself done anything to promote confusion in the minds of the public, except to use the name 'Remington' on its machines and in its literature."

Accepting that conclusion, it follows that complainant's case must stand or fall on the possession of the exclusive right to the use of the name "Remington."

But it is well settled that a personal name cannot be exclusively appropriated by any one as against others having a right to use it; and as the name "Remington" is an ordinary family surname, it was manifestly incapable of exclusive appropriation as a valid trade mark, and its registration as such could not in itself give it validity. *Brown Chemical Company* v. *Meyer et al.*, 139 U. S. 540; *Singer Manufacturing Company* v. *June Manufacturing Company*, 163 U. S. 169; *Elgin National Watch Company* v. *Illinois Watch Case Company*, 179 U. S. 665.

The general rule and the restrictions upon it are thus stated in *Brown Chemical Company* v. *Meyer*. There plaintiff had adopted as a trade mark for its medicine the words "Brown's Iron Bitters," and the defendants used upon their medicine the words "Brown's Iron Tonic." This court, after commenting upon the descriptive character of the words "Iron Tonic," and confirming the defendants' right to the use of these, said:

"It is hardly necessary to say that an ordinary surname cannot be appropriated as a trade mark by any one person as against others of the same name who are using it for a legitimate purpose; although cases are not wanting of injunctions to restrain the use, even of one's own name, where a fraud upon another is manifestly intended or where he has assigned or parted with his right to use it."

And, after citing numerous authorities, Mr. Justice Brown, delivering the opinion, continued:

"These cases obviously apply only where the defendant adds to his own name imitation of the plaintiff's labels, boxes or packages, and thereby the public are induced to believe that his goods are those of the plaintiff. A man's name is his own property, and he has the same right to its use and enjoyment, as he has to that of any other species of property. If such use be a reasonable, honest and fair exercise of such right, he is no more liable for the incidental damages he may do a rival in trade, than he would be for an injury to his neighbor's property by the smoke issuing from his chimney, or for the fall of his neighbor's house by reason of necessary excavations upon his own lands. These and similar instances are cases of *damnum absque injuria*."

In *Singer Mfg. Co.* v. *June Mfg Co.*, 163 U. S. 169, the rule is thus laid down by Mr. Justice White:

"Although every one has the absolute right to use his own name honestly in his own business, even though he may thereby incidentally interfere with and injure the business of another having the same name, in such case the inconvenience or loss to which those having a common right are

subjected is *damnum absque injuria*, but although he may thus use his name he cannot resort to any artifice, or do any act calculated to mislead the public as to the identity of the business, firm or establishment, or of the article produced by them, and thus produce injury to the other beyond that which results from the similarity of name."

In the present case, the decree enjoined the use, "in any manner whatsoever," "of the designation 'Remington' as the name, or part of the name, of any typewriting machine whatsoever manufactured by the Remington-Sholes Company, or by defendant or any person or concern, and from selling, offering, exposing or advertising for sale by means of signs, show cards, catalogues, circulars, publications, advertisements or by word of mouth, or in any manner whatsoever, typewriting machines manufactured by said Remington-Sholes Company or by defendant, or any person or concern under the name of or as 'Remington-Sholes,' or by any designation of which the word Remington shall constitute a part." This denies the right to use the personal name, rather than aims to correct an abuse of that right, and involves the assertion of the proposition that the use of a family name by a corporation stands on a different footing from its use by individuals or firms. But if every man has the right to use his name reasonably and honestly, in every way, we cannot perceive any practical distinction between the use of the name in a firm and its use in a corporation. It is dishonesty in the use that is condemned, whether in a partnership or corporate name, and not the use itself.

*Goodyear's India Rubber Glove Manufacturing Company* v. *Goodyear Rubber Company*, 128 U. S. 598, was a suit by a corporation of New York against a corporation of Connecticut, to restrain the use in business of the name "Goodyear's Rubber Manufacturing Company," or any equivalent name. It was held that "Goodyear Rubber" described well-known classes of goods produced by the process known as Goodyear's invention; and that such descriptive names could not be exclusively appropriated. And Mr. Justice Field, delivering the opinion, said: "Names of such articles cannot be adopted as trade marks, and be thereby appropriated to the exclusive right of any one; nor will the incorporation of a company in the name of an article of commerce, without other specification, create any exclusive right to the use of the name."

The principle that one corporation is not entitled to restrain another from using in its corporate title a name to which others have a common right, is sustained by the discussion in *Columbia Mill Company* v. *Alcorn*, 150 U. S. 460, and is, we think, necessarily applicable to all names *publici juris*. *American Cereal Company* v. *Eli Pettijohn Cereal Company*, 72 Fed. Rep. 903, 76 Fed. Rep. 372; *Hazelton Boiler Company* v. *Hazelton Tripod Boiler Company*, 142 Ill. 494; *Monarch* v. *Rosenfeld*, 39 S. W. Rep. 236.

It is said that the use of the word "Remington" in the name "Remington-Sholes" was unnecessary, as if necessity were the absolute test of the right to use. But a person is not obliged to abandon the use of his name or to unreasonably restrict it. The question is whether his use is reasonable and honest, or is calculated to deceive.

"It is a question of evidence in each case whether there is false representation or not." *Burgess* v. *Burgess*, 3 De G. M. & G. 896.

The Circuit Court of Appeals in the present case quotes with approval from the concurring opinion of Wallace, J., in *R. W. Rogers Company* v. *William Rogers Man. Co.*, 70 Fed. Rep. 1019, that "a body of associates who organize a corporation for manufacturing and selling a particular product are not lawfully entitled to employ as their corporate name in that business the name of one of their number when it appears that such name has been intentionally selected in order to compete with an established concern of the same name, engaged in similar business, and divert the latter's trade to themselves by confusing the identity of the products of both, and leading purchasers to buy those of one for those of the other. . . . The corporators chose the name unnecessarily, and having done so for the purpose of unfair competition, cannot be permitted to use it to the injury of the complainant."

This, of course, assumes not only that the name selected was calculated to deceive, but that the selection was made for that purpose.

In *Turton and Sons* v. *Turton and Sons*, 42 Ch. Div. 128, plaintiffs had carried on the iron business as "Thomas Turton and Sons." Defendant began the same business as John Turton, then traded as John Turton and Co., and finally took in his sons and changed the firm name to "John Turton and Sons." Some confusion had arisen, and plaintiffs contended that there was no necessity for defendants to use their own names.

Lord Esher said: "Therefore the proposition goes to this length: That if a man is in business and has so carried on his business that his name has become a value in the market, another man must not use his own name. If that other man comes and carries on business he must discard his own name and take a false one. The proposition seems to me so monstrous that the statement of it carries its own refutation."

And Lord Macnaghten said in *Reddaway* v. *Banham*, L. R. Appeal Cases, 1896, p. 220: "I am quite at a loss to know why *Turton* v. *Turton* was ever reported. The plaintiff's case there was extravagant and absurd." And see *Meneely* v. *Meneely*, 62 N. Y. 427; *Meriden Co.* v. *Parker*, 39 Conn. 450.

In our opinion the Remingtons and Sholes made a reasonable and fair use of their names in adopting the name "Remington-Sholes" for their machine, and in giving that name to the corporation formed for its manufacture and sale.

The formation of a corporation as an effective form of business enterprise was not only reasonable in itself, but the usual means in the obtaining of needed capital. And as Wallace, J., said: "It was natural that those who had invented the machine, and given all their time and means in introducing it to the public, when they came to organize the corporation which was to represent the culmination of their hopes and efforts, should choose their own name as the corporate name. In doing so I think they were exercising only the common privilege that every man has to use his own name in his own business, provided it is not chosen as a cover for unfair competition. They did not choose the complainant's name literally, or so closely that those using ordinary discrimination would confuse the identity of the two names, and that differentiation is sufficient to relieve them of any imputation of fraud."

The name "Remington-Sholes-Company" is not identical with, or an imitation of, "Remington Standard Typewriter Company," or "Remington Typewriter Company," or "E. Remington and Sons." Defendant's marks "Rem-Sho," "Remington-Sholes Co., Mgrs., Chicago," are not identical with or an imitation of complainant's marks "Remington;" Large Red Seal; "Remington Standard Typewriter, manufactured by Wyckoff, Seamans and Benedict, Ilion, N. Y., U. S. A.;" "Remington Standard Typewriter."

The use of two distinct surnames clearly differentiated the machines of defendant from those of complainant, and when defendant's cards, signs, catalogues, instructions to agents &c., are considered, it seems to us that the record discloses, to use the language of Mr. Justice Field in the Goodyear case, a persistent effort on defendant's part "to call the attention of the public to its own manufactured goods, and the places where they are to be had, and that it has no connection with the plaintiff." Doubtless the Remingtons and Sholes, in using the name "Remington-Sholes," desired to avail themselves of the general family reputation attached to the two names, but that does not in itself justify the assumption that their purpose was to confuse their machines with complainant's; or that the use of that name was in itself calculated to deceive. Remington and Sholes were interested in the old company, and Remington continued as general manager of the new company. Neither of them was paid for the use of his name, and neither of them had parted with the right to that use. Having the right to that use, courts will not interfere where the only confusion, if any, results from a similarity of the names and not from the manner of the use. The essence of the wrong in unfair competition consists in the sale of the goods of one manufacturer or vendor for those of another, and if defendant so conducts its business as not to palm off its goods as those of complainant, the action fails.

As observed by Mr. Justice Strong in the leading case of *Canal Company* v. *Clark*, 13 Wall. 311: "Purchasers may be mistaken, but they are not deceived by false representations, and equity will not enjoin against telling the truth." And by Mr. Justice Clifford, in *McLean* v. *Fleming*, 96 U. S. 245: "A court of equity will not interfere when ordinary attention by the purchaser of an article will enable him at once to discriminate the one from the other." And by Mr. Justice Jackson in *Columbia Mills Company* v. *Alcorn*, 150 U. S. 460: "Even in the case of a valid trade mark the similarity of brands must be such as to mislead the ordinary observer." And see *Coats* v. *Merrick Thread Company*, 149 U. S. 562; *Liggett Tobacco Company* v. *Finzer*, 128 U. S. 182.

We hold that, in the absence of contract, fraud or estoppel, any man may use his own name, in all legitimate ways, and as the whole or a part of a corporate name. And, in our view, defendant's name and trade mark were not intended or likely to deceive, and there was nothing of substance shown in defendant's conduct in their use constituting unfair competition, or calling for the imposition of restrictions lest actionable injury might result, as may confessedly be done in a proper case.

*Decree of Circuit Court of Appeals reversed; decree of Circuit Court also reversed, and cause remanded to that court with a direction to dismiss the bill.*

**True copy.**

**Test:**

*Clerk Supreme Court, U. S.*